

No. 4001

United States⁴
Circuit Court of Appeals
For the Ninth Circuit

WILLIAM J. CAMPBELL and
J. L. TOBIN,

Plaintiffs in Error

vs.

WILLIAM GRANT,

Defendant in Error.

Transcript of Record

In Error to the United States District Court
For the Territory of Alaska
Fourth Division.

FILED

SEP 11 1923

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INDEX

	Page No.
Answer	6
Assignment of Errors	699
Attorneys of Record, Names and Addresses.....	1
Bill of Exceptions	10
Bond on Writ of Error	697
Complaint	3
Citation on Writ of Error	720
Certificate of Clerk to Transcript of Record	723
Defendants' Exceptions to Court's Instructions....	685
EXHIBITS:	
Plaintiff's	
"A" (Plat)	30
"B" (Location Notice)	77
"C" (Location Notice)	124
"D" (Certified Copy Location Notice)....	196
"E" (Certified Copy Location Notice)....	205
"F" (Certified Copy Location Notice)....	393
"G" (Agreement)	548
"H" (Registration Card)	645
"I" (Registration Card)	645
Defendants'	
"1" (Affidavit of Annual Labor)	142
"2" (Plat)	331
Finding as to Value	695
Instructions to the Jury	647
Judgment	692
Order Settling and Allowing Bill of Exceptions..	690
Order Fixing Supersedeas Bond	696
Order Approving and Finding as to Value	695

	Page No.
Order Allowing Writ of Error	719
Order Extending Return Day	721
Praeipce for Transcript	2
Petition for Writ of Error	716
Reply	9
Stipulation Relative to Printing Record	1
Stipulation as to Value	695
TESTIMONY IN BEHALF OF PLAINTIFF:	
Busia, John	207
Rebuttal	628
Cross-rebuttal	630
Campbell, Wm. J.	202
Cross-examination	203
Friedrich, Alois	11-271
Cross-examination	31-274
Re-direct examination	45
Re-cross examination	222
Rebuttal	627
O. M. Grant	209-226
Cross-examination	235
Re-direct examination	249
Rebuttal	618
Cross-rebuttal	620
Grant, Wm.	51-313
Cross-examination	130-317
Re-direct examination	188-321
Re-cross examination	192-322
Rebuttal	618-631
Cross-rebuttal	620-638
Re-direct	644

Owen, Harry	288
Cross-examination	300
Re-direct examination	311
Re-cross examination	313
Parenteau, Roger	279
Cross-examination	286
Rebuttal	623
Cross-rebuttal	626
Quigley, J. B.	194
Cross-examination	201
Sutherland, Dan	251
Cross-examination	255
Re-direct examination	258
Ten Eyck, Wm. F.	258
Cross-examination	265
Re-direct examination	268
Re-cross examination	269
Further direct	270
Further cross	270
Rebuttal	615
Cross-rebuttal	617

TESTIMONY IN BEHALF OF DEFENDANTS:

Black, George	592
Busia, John	558
Cross-examination	562
Re-direct examination	564
Campbell, Wm. J.	324-331-472-613
Cross-examination	330-365-613
Re-direct examination	400
Re-cross examination	404
Sur-rebuttal	646

	Page No.
Dalton, Joseph	565
Cross-examination	574
Re-direct examination	589
Re-cross examination	590
Further direct	592
Further cross	592
Davis, John	473
Geoghegan, R. H.	595
Cross-examination	597
Moody, George	607
Cross-examination	609
Re-direct examination	612
Quigley, J. B.	478
Cross-examination	494
Re-direct examination	538
Re-cross examination	540
Further direct	541-550
Further cross	542-547-552
Roth, R. F.	601
Cross-examination	601
Tobin, J. L.	405-421-472
Cross-examination	434
Re-direct examination	465
Verdict	692
Writ of Error	717

Names and Addresses of Attorneys of Record

R. F. ROTH, Attorney for Defendants and Plaintiffs in Error, Fairbanks, Alaska.

MORTON E. STEVENS, Attorney for Plaintiff and Defendant in Error, Fairbanks, Alaska.

In the District Court for the Territory of Alaska,
Fourth Judicial Division
No. 2528

WILLIAM GRANT, Plaintiff,

vs.

WILLIAM J. CAMPBELL and J. L. TOBIN,
Defendants.

Stipulation Relative to Printing of Record.

IT IS HEREBY STIPULATED AND AGREED that in the printing of the record herein for the consideration of the court on appeal, that the title of the court and cause in full on all papers shall be omitted excepting the first page, and inserted in place and instead therein "Title of Court and Cause".

Done this 7th day of September, 1922.

MORTON E. STEVENS

Attorney for Plaintiff

R. F. ROTH

Attorney for Defendants.

Indorsed: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 7, 1922. Robt. W. Taylor, Clerk by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

Praeceptum for Transcript of Record

To the Clerk of the above entitled Court:

You will please prepare the transcript of record in this case, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under a Writ of Error heretofore perfected to said court, and including in said transcript the papers hereafter set forth, to-wit:

1. Complaint
- 2 Answer
- 3 Reply
- 4 Verdict of the jury
- 5 Judgment
- 6 Bill of exceptions
- 7 Order Settling Bill of Exceptions
- 8 Assignment of Errors
- 9 Petition for writ of error
- 10 Writ of Error
- 11 Order allowing writ of error
- 12 Bond
- 13 Citation and admission of service thereon
- 14 Order of Supersedeas
- 15 Order extending return day
- 16 Stipulation for printing of the transcript
- 17 Praeceptum of transcript
- 18 Stipulation as to Value
- 19 Finding as to Value

Said transcript to be prepared as required by law and the rules of this court, and the rules of the United States Circuit Court of Appeals for the Ninth

Circuit, at San Francisco, California, before the 1st day of April, 1923.

R. F. ROTH

Attorney for Plaintiffs in error.

Indorsed: Filed in the District Court, Territory of Alaska, 4th Div. Sep. 7, 1922, Rob't. W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

COMPLAINT

Plaintiff complains of defendants and alleges:

1.

That the defendants herein designated as John Dow and Richard Roe are so named for the reason that their true names are unknown to plaintiff. That plaintiff will ask to have the true names of such defendants entered in this action when such true names are hereafter disclosed to the Court.

11.

That plaintiff is now, and ever since the month of April 1920, has been the owner in fee, as against all persons, subject only to the paramount title of the United States in unpatented public domain, and ever since said date has been, and now is, entitled to the possession of that certain tract of placer mining ground known as Hill Bench Claim, containing Twenty (20) acres, more or less, being opposite to, adjoining and lying East of the Horse-shoe placer mining claim, on the right limit of Moose Creek, being Thirteen hundred and twenty feet (1320 ft) in length and six hundred and sixty (660) feet in width in the Kantishna Precinct, Alaska.

111.

That plaintiff is now, and ever since about the 25th day of July, 1921, has been the owner in fee as against all persons, subject only to the paramount title of the United States in unpatented public domain, and ever since said date has been, and now is, entitled to the possession of that certain tract of quartz mining ground known as Hill Side Lode Claim, the center upper end post of said claim being within the boundaries of the above described placer mining claim of plaintiff, and situate, about Eighty (80) feet down hill and in a Westerly direction from the mouth of what is known as the Quigley Tunnel, said post being the discovery post on which the notice of location of said claim is posted; thence running in a Westerly direction, and down-hill, along the vein, through said Hill Bench and Horse-shoe placer claims, a distance of Fifteen hundred (1500) feet to the center lower end line Post of said quartz claim. The side lines of said Hill Side Lode Claim run parallel to said lode, and Twenty five (25) feet on either side of the center of the vein, all in said Kantishna Precinct.

IV.

That, defendants are wrongfully in possession of the above described placer and lode claims of plaintiff, and have wrongfully excluded plaintiff from the possession thereof, and continue to wrongfully withhold the same, to the damage of plaintiff in the sum of Five Hundred (\$500.) Dollars.

WHEREFORE plaintiff demands judgment

against defendants, and each of them:

1st. For the possession of the property herein described, and the whole thereof, and that plaintiff be adjudged to be entitled to the possession, and the whole thereof.

2nd. For damages for the wrongful withholding of said premises in the sum of Five hundred (\$500.) Dollars.

3rd. That defendants, and each of them, and all persons acting through them, or upon their behalf, be enjoined, pending the determination of this suit, and for all time thereafter, from in any manner whatsoever interfering with the plaintiff's right of possession of the property in this complaint described.

4th. For costs and disbursements herein expended.

MORTON E. STEVENS

Attorney for Plaintiff.

United States {
Territory of Alaska { ss.

William Grant, being first duly sworn, upon his oath deposes and says: That he is the plaintiff above named, that he has read the foregoing complaint, knows the contents thereof, and that the same is true, as he verily believes.

WM. GRANT.

Subscribed and sworn to before me this 9th day of August, 1921.

(Seal)

MORTON E. STEVENS.

Notary Public for Alaska. My commission expires July 15, 1922.

Indorsed: Filed in the District Court, Territory of Alaska, 4th Div. Aug. 9, 1921, H. Claude Kelly, Clerk, by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

ANSWER.

Comes now the defendants William J. Campbell and J. L. Tobin, and answering plaintiff's complaint on file herein, allege and deny as follows:

1.

Answering Paragraph 2 of said complaint, defendants deny each and every allegation contained in said paragraph.

11.

Answering Paragraph 3 of said complaint, defendants deny each and every allegation contained in said paragraph.

111.

Answering Paragraph 4 of said complaint, defendants deny each and every allegation contained therein,

For a further separate and affirmative defense, these defendants allege as follows:

1.

That on the first day of June, 1921, these defendants discovered a vein or lode of quartz in place bearing gold, silver and other valuable minerals on unappropriated public domain of the United States, on the left limit of Friday Creek and on the right limit of Moose Creek and at the confluence of said two creeks in the Kantishna Mining and Recording Precinct, Territory of Alaska, and that on the sixth

day of June, 1921, these defendants located and marked the boundaries on the ground so that the same could be readily traced and located the same as a lode claim and called it the Silver King Lode Mining Claim; that they posted a notice of location of said Silver King Lode Mining Claim at the place of discovery which was a shaft sunk by them to a depth of about forty feet or more, and thereafter, to wit on the seventh day of July, 1921, recorded the notice of location so posted at the discovery shaft, as in this paragraph stated,, in the office of the Recorder of the Kantishna Recording Precinct, Fourth Judicial Division, Territory of Alaska, and that the same was recorded in Volume One of "General" at Page 207 and was numbered by the Recorder of said Precinct as No. 3147.

11.

That said discovery of rock in place, bearing gold, silver and other valuable minerals as herein before described, was upon a vein or lode which was well known to exist long prior to the first day of June, 1921.

111.

That ever since the sixth day of June, 1921, these defendants were the owners of and are now the owners of said Silver King Lode Mining Claim and have the title in fee thereto, as against the whole world except the paramount title of the United States.

IV.

That these defendants were in possession of said Silver King Lode Mining Claim at the time of the

commencement of this action and at said time were carrying on the work of developing the lode upon said claim.

V.

That the lode claim of these defendants above described and now in possession of these defendants is the only ground in the possession of these defendants and claimed by them which is referred to in Paragraph 4 of plaintiff's complaint and these defendants allege that plaintiff has no right, title or interest in or to said Silver King Lode Mining Claim as against these defendants.

WHEREFORE Defendants William J. Campbell and J. L. Tobin pray judgment against plaintiff;

1st. That plaintiff take nothing herein.

2nd. That said defendants William J. Campbell and J. L. Tobin be adjudged to be the owners of said Silver King Lode Mining Claim as against all the world and especially plaintiff herein, except as against the paramount title of the United States.

3rd. That these defendants William J. Campbell and J. L. Tobin have and recover of and from plaintiff their costs and disbursements herein expended.

R. F. ROTH

Attorney for defendants William J.
Campbell and J. L. Tobin.

United States of America.	{	ss.
Territory of Alaska		

William J. Campbell, being first duly sworn, upon oath deposes and says: That he is one of the defendants named in the foregoing answer, that he has read

the same, knows the contents thereof, and that the same is true of his own knowledge as he verily believes.

WILLIAM J. CAMPBELL

Subscribed and sworn to before me this 12th day of October, 1921.

(Seal)

HOWARD J. ATWELL

Notary Public in and for the
Territory of Alaska. My commission
expires Nov. 15, 1923.

Due service of a copy of the foregoing Answer admitted this 12th day of October, 1921. Morton E. Stevens, Attorney for Plaintiff.

Indorsed: Filed in the District Court, Territory of Alaska, 4th Div. Oct. 12, 1921, H. Claude Kelly, by Clerk, by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

Reply

Comes now the plaintiff and for reply to the answer of the defendants, herein, William J. Campbell and J. L. Tobin, says:

1.

That plaintiff denies each and every allegation contained in defendants so called further, separate and affirmative defense, as contained in paragraphs 1, 2, 3, 4, and 5 thereof, saving and excepting that plaintiff admits that said defendants were in possession of a portion of the mining property described in plaintiff's complaint, at the time of the commencement of this action, and claimed by plaintiff.

MORTON E. STEVENS

Attorney for Plaintiff

United States }
Territory of Alaska } ss.

William Grant, being duly sworn, upon his oath deposes and says: that he is the plaintiff above named, that he has read the foregoing reply, knows the contents thereof, and that the same is true as he verily believes.

WM. GRANT

Subscribed and sworn to before me this 28th day of November, 1921.

(Seal)

MORTON E. STEVENS

Notary Public for Alaska.

My commission expires July
15th, 1922.

Service of the foregoing Reply and the receipt of a copy thereof is hereby admitted this 29 day of November, 1921. R. F. Roth, Attorney for answering defendants.

Indorsed: Filed in the District Court, Territory of Alaska, 4th Div. Nov. 29, 1921, H. Claude Kelly, Clerk by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

This case came on regularly for trial at Fairbanks, Fourth Judicial Division, Territory of Alaska, at 10.00 A. M., February 1, 1922, Honorable Cecil H. Clegg, Judge, presiding.

Mr. M. E. Stevens appeared as attorney on behalf of the Plaintiff, and the Defendants and their attorney Mr. R. F. Roth, were present in Court. Proceedings were regularly taken to impanel a jury, after which an opening statement was made on each side,

whereupon at the request of the attorney for the plaintiff, the witnesses were excluded from the court room, save the witness under examination, and the following proceedings were had and testimony was taken:

Alois Friedrich called as a witness for the Plaintiff, after being duly sworn, testified:

Direct Examination

By Mr. Stevens:

Q Please state your name.

A Alois Friedrich.

Q How long have you lived in Alaska?

A Pretty close to twenty five years.

Q Have you lived in the vicinity of Fairbanks for a number of years?

A Yes, since 1904.

Q State whether or not you have been engaged in mining.

A I have, around Fairbanks considerably.

Q In Alaska?

A In Alaska.

Q Ever since you have been here?

A Most of the time.

Q Have you had experience in placer mining?

A Very little.

Q Have you had experience in quartz mining?

A Considerable of it.

Q Since you have been in Alaska?

A Since I have been in Alaska.

Q Have you had any mining experience prior to your coming to Alaska?

A Some.

Q Where?

A In northern Wisconsin.

Q Have you been in the Kantishna Precinct or mining district?

A I have.

Q How long have you been up in that country?

A I was up there in 1905 and 1906 approximately eighteen months.

Q Have you some interests over there as a miner?

A I have, yes sir.

Q What profession, if any, do you follow?

A At present I am following surveying.

Q And civil engineering?

A Yes sir.

Q Have you had experience as a surveyor?

A I had considerable experience on the outside as a boy, running with county survey parties, etc. between the age of eighteen and twenty-two.

Q You assisted in surveys?

A As chainman and rodman.

Q Have you had any training in mathematics and surveying?

A I have.

Q What is the extent of your education in that line?

A I have taken a complete course in recent years with the International Correspondence School.

Q You completed that course, did you?

A Yes sir, the surveying course is completed.

Q You obtained your degree to that effect?

A I haven't got papers yet as I wish to go on with engineering and it will probably take another six months to get a diploma.

Q State whether or not you have obtained an education in mathematics.

A I have taken the complete course in mathematics.

Q Are you acquainted with the ground in controversy in this case?

A I am acquainted with it.

Q Have you recently made any surveys in regard to the ground in dispute in this case?

A I have.

Q Did you make a survey of what Mr. Grant, the plaintiff in this case, has designated as the Hill-side Bench Claim on the right limit of Moose Creek adjoining north of the placer claim known as the Horse Shoe Claim.

A I made a complete survey of the tract.

Q Did you make measurements and calculations of distances, etc. —

A Yes sir.

Q ---in regard to the quartz location of Mr. Quigley, known as the Red Top Lode Claim?

A I have located two of Mr. Quigley's posts, one is his north west corner, and also his center stake.

Q You took field notes of your observations in the vicinity of those claims?

A Yes sir.

Q And did you draw a map or plat from those field notes?

A I did.

Q I call your attention to a plat or map on the blackboard here and ask you to examine the same and state whether or not this is the same plat you made from your field notes as a result of your survey and measurements.

A This is the exact plat made from the result of field notes and survey.

Q And you made that at the request of the plaintiff?

A Made it at the request of plaintiff's counsel.

Q And it was made within the last few days?

A Between the 12th and 14th of January.

Q It is identified by your signature?

A By my signature.

Q Printed signature?

A Yes.

Q Down near the lower left hand corner you have indicated apparently the direction of the magnetic north.

A Correct.

Q Is that the true course as indicated on there?

A No, that is magnetically correct.

Q Is that the true indication of the magnetic course?

A Correct.

Q Now the true north would be farther towards the left of the map, would it not?

A To the west approximately twenty-nine degrees.

Q Farther to the west than is indicated by the magnetic north?

A Twenty-nine degrees being the variation of the magnetic needle.

Q In the lower left hand corner of the map is a point indicated as corner No. 1 post.

A Correct.

Q Did you see that post?

A I did.

Q Do you know whether or not there is any writing upon it?

A There is not anything legible. The post is so old and the writing is indistinct.

Q How high is the post above the ground?

A Approximately four feet above ground.

Q How large is it in diameter?

A Square four inches-cottonwood.

Q Do you know whether or not it contains a number?

A It contains No. 1 initial post.

Q Can you state whether anything else is written on the post inside towards the placer claim?

A I could distinguish "19--" but could not complete the rest. Also distinguished Mr. Grant's name.

Q William Grant?

A Yes. And distinguished claiming 660 ft. in a northerly direction-northeasterly direction.

Q Anything else on the post?

A Not that I remember.

Q Passing on to the lower right hand portion of this map, there is a point designated as corner No. 2 post. Were you there?

A Yes sir.

Q What kind of a post is that?

A It is four inches square. It is leaning- doesn't stand upright. If it was upright, it would be approximately four feet above the ground. Cottonwood also.

Q How thick?

A Square four inches.

Q Did you see any writing?

A Yes sir, you can see "Post No. 2" and William Grant's name.

Q Can you distinguish the name of the claim on that post No. 1?

A Not on that one.

Q What is the appearance of post No. 2 relative to age?

A It must be five or six years old, if not older. Indications are that it has been there a long time- leaning over from age.

Q Then in a northerly direction, generally speaking, to corner No. 3 post. Were you there?

A I was there.

Q And what did you observe relative to that post?

A I found on No. 3 post, don't remember distinctly whether it was April 16th or 19th- couldn't say positively- 1920, April 16th or 19th, 1920.

Q Did you say or not, that it was No. 1?

A Post No. 3.

Q Could you see the name of any claim?

A Not that I remember.

Q Or the name of the locator?

A No.

Q How high above the ground was it?

A Approximately three feet above the ground.

Q Was it as much as three feet?

A Pretty close-I didn't measure.

Q About how thick was it?

A Between two and one-half and three inches.

Q Was there snow on the ground?

A Considerable.

Q About how deep?

A Eighteen inches probably.

Q Passing over to the upper left hand corner, near there is corner No. 4 post designated. Were you there?

A I was.

Q Did you see that post?

A I did.

Q Describe it.

A That post was approximately three feet above ground, two and one-half or three inches square, and claiming 660 ft. down hill, post No. 4. No writing.

Q Did you see the name of the claim or locator?

A No.

Q Did you see any arrows on that post pointing down hill?

A Yes.

Q One arrow pointed down hill towards No. 1?

A Yes sir, correct.

Q Did you see any arrows pointing towards post No. 3?

A No.

Q Going back the way we came to post No. 3. Were there any arrows there?

A Not that I can remember.

Q Did you see any arrows on post No. 2?

A Couldn't possibly be-too old.

Q Any arrows on post No. 1?

A No, too old, couldn't distinguish it.

Q Did all four posts indicate considerable age?

A The lower two did, and the other two a year or eighteen months approximately, as near as can be judged from the color of the posts.

Q Posts No. 1 and No. 2-did you examine the other side opposite Grant's placer claim?

A I did.

Q Did you see any names?

A Positively nothing.

MR. ROTH: Which stake?

MR. STEVENS: Other side of No. 1 and No. 2.

Q What claim is adjoining?

A I don't know-understand Mr. Hamilton—

Q Well, is Mr. Hamilton's claim known as the Horse Shoe Claim?

A I don't know.

Q What are Mr. Hamilton's initials?

A John Hamilton.

Q On the line between corner post No. 1 and corner post No. 4 you have indicated corner No. 5, being 660 ft., according to the map, between initial stake and No. 5. Is that the result of your measurements?

A Chaining, yes.

Q You chained up the distance from initial post along the end line 660 ft?

A Correct.

Q Then from what you have there corner No. 5 up to corner No. 4 indicates a distance of 136 ft. between those two?

A Correct.

Q Is that the result of accurate measurements?

A That is the result of accurate chaining.

Q How about the other line, the southerly side line, between post No. 1 and post No. 2 which you have marked 1400 ft. 8 in. Is that correct?

A As near as can be chained.

Q You chained to find out?

A I had two chainmen chaining it.

Q You were there setting each point with the instrument?

A Yes sir.

Q The distance between post No. 2 and No. 3 as indicated on this map is 616 ft. 8 in. Is that correct?

A Same kind of chaining.

MR. ROTH: What is measurement?

MR. STEVENS: 616ft. and 8 in.

Q From corner No. 3 to corner No. 4 you have indicated on the map as being 1300 ft.

A A correct.

Q Is that the result of measurement?

A Result of measurement.

Q Then the line from corner No. 3 to corner

No. 5 is indicated on here as 1290.4 ft. Is that correct?

A Correct. That is calculation from the triangle.

Q You calculated the distance instead of measuring?

A Instead of measuring.

Q The accuracy is just as good as if measured?

A Should be better.

Q Entirely outside of the boundaries of this placer claim, or any of the boundaries, and near the top of this map, there is a small square and that is indicated as "Quigley's Discovery." Were you up there?

A Yes sir.

Q What is that discovery?

A A shaft sunk to considerable depth, showing the lode.

Q It is recognized and known as Quigley's discovery on a lode or vein?

A Yes, the Red Top Lode.

Q Were you in the country when Mr. Quigley started that?

A I was in the country, yes.

Q How long ago was it when you first saw the Quigley discovery?

A Some time during the early fall of 1920. Mr. Quigley had made his discovery a little earlier than mine-mine was in August-his in July.

Q It was 1920?

A Somewhere along there.

Q Coming along down south-southwesterly from

that discovery of Quigley's, according to this plat, you have marked 170 ft. and 4 in. from the discovery of Quigley's down to the intersection of the line between corner post No. 3 and corner post No. 4 of the placer location. Is that correct?

A Correct, by measurement again.

Q And from that intersection of that line that point you have marked 96 ft. and 10 in.---

A Correct.

Q---down to what is the mouth of Quigley's tunnel---

A Yes sir.

Q Is that correct?

A Yes sir, correct according to measurement.

Q Coming on down along supposedly that bench you have 173 ft. indicated as the distance between the mouth of Quigley's tunnel and Quigley's end stake which is on the line indicated on the map as between the southwest corner of the Red Top Lode and the southeast corner of the Red Top Lode. Is that distance of 173 ft. correct?

A It was measured, but over very rough ground and there might be a variation of one foot, but it is substantially correct.

Q You also have a distance indicated of 160 ft. between the extension of the lower end line of Quigley's claim and the extension of corner No. 5. Is that the correct distance?

A That is the correct distance.

Q Mr. Friedrich, you have indicated in orange color, or red---

A Orange.

Q —the southerly end line of Quigley's location, and from Quigley's southwest corner of the Red Top Lode to the center post of the Red Top Lode is 320 ft. —

A 320 ft. is correct as near as you can make it.

Q Was it measured by you?

A Yes sir.

Q That is one side of what is supposed to be the center of the vein?

A The northwest side.

Q And the other side was put on approximately?

A Approximately 300 ft.

Q You scaled and put it on the map?

A Did not measure that distance.

Q Now you have indicated by a dotted red line between A and B, and between C and D on either side of what might be the vein of the Red Top. What do those lines indicate?

A They indicate 25 ft. distance on each side of the center of the lode.

Q Those are imaginary lines, are they not?

A Yes, imaginary.

Q They were put there to indicate where the Red Top location side lines would be if Quigley had confined himself to 25 ft. on either side of the center of the vein within the boundaries of the placer claim?

A That is the idea.

Q But those lines do not exist?

A No, they do not exist.

Q Those lines were put on at my request to indicate the situation?

A That is it.

Q As I understand, the distance as indicated there, 173 ft., is correct?

A Oh, that is as nearly correct as you can make it.

Q There are dotted lines from near the point "A" running down hill westerly, or southwesterly, and another line from "D" or near "D". running down hill parallel thereto, inside of which two lines you have the Hillside Lode Claim. Did you put those on there?

A I did put those lines on, yes sir.

Q Those were put on there to indicate the quartz location made by the plaintiff in this case?

A They were put there and are approximate.

Q Being 25 ft. on either side of the center of where the lode is supposed to run?

A Should be.

Q Will you state to the jury what scale this map is?

A The scale is one inch equals 100 ft.

Q 1 inch to 100 ft.?

A Correct.

Q That is indicated on here?

A Yes sir.

Q Probably 50 ft. or more below, or in a southwesterly direction from the center post of the Red Top, there is a little square there and it is indicated as the Campbell and Tobin shaft. What is that?

A All I can see is a hole with a windlass set over it, was never down in it.

Q Was there any dump?

A Oh, yes.

Q Was any one with you when you looked at it?

A Yes.

Q Who was there?

A Mr. Grant and O. M. Grant.

Q Did either one of those gentlemen identify and ask you to measure from that?

A They did, in fact, I located all holes from that line.

Q Now looking at the map, to the right is indicated just a hole. Is the location of that hole correct?

A It is approximately correct.

Q And the other hole we have been talking about, is that approximately correct?

A They are located from the supposed strike of the vein.

Q Running straight in line with Quigley's discovery?

A Correct. The line runs north 41 east magnetic.

Q I believe you have indicated here ten holes altogether on that map.

A Correct.

Q Are the locations of those ten holes approximately correct?

A They are approximately correct.

Q You have indicated the depth of the holes.

A They were all given to me by Mr. Grant.

Q You didn't measure them?

A I did not.

Q Could you see to the bottom?

A I had them all shoveled out, but they are all full of water and ice.

Q Were you able to look down in those holes and see something approximately like the distance?

A Yes, within two or three feet anyway.

Q Down in the vicinity of these holes and within the boundaries of the placer claim as indicated, there is a dark square there indicated as a "cabin". Is that approximately correct?

A Yes, approximately correct.

Q In 1921, along in June or July, was that cabin there?

A Not to my knowledge.

Q Was there a tent?

A Not to my knowledge-I didn't know anything about it.

Q Were you there along in July?

A Yes, along some time in July-there is a natural crossing there and----

Q The house indicated as Quigley residence, the block indicated as the cache, the bunkhouse and blacksmith shop-state whether or not those four buildings are by common repute the buildings of Mr. Quigley.

A Yes, they are Mr. Quigley's buildings.

Q Are they indicated approximately correct on the map?

A They are approximate-the house is absolutely correct, but the cache, bunkhouse and (the black-

smith shop is absolutely) -others approximately. The cache and bunkhouse are approximate.

Q Of course, those holes and houses are really too big to be drawn--are indicated too large according to the scale of the map?

A They would have to be exaggerated to see them at all.

Q Now Mr. Friedrich, I see here in a very good character of printing, near the top of the map, a statement as follows: "The area between the boundaries of Post No. 1, Post No. 2, Post No. 3, Post No. 4, corner No. 5, and Post No. 1, or place of beginning, is equal to 23.66641 acres." Is that the correct area as indicated between those various posts?

A It is.

Q And that relates to the area of the Hillside Placer Claim, according to the original stakes?

A According to stakes Nos. 1, 2, 3 and 4 as I found them, yes sir.

Q The excess over twenty acres would be a little over 3.6 acres?

A Yes sir.

Q There is another statement on here as follows: "The area within the boundaries of Post No. 1, Post No. 2, Post No. 3 and corner No. 5, and Post No. 1, or place of beginning, is equal to 21.65278 acres in area."

A Yes sir.

Q That relates to the area of the placer claim between the initial post, post No. 2, post No. 3, and corner No. 5?

A Yes sir.

Q And that area is a little over 1.6 acres in excess of 20 acres?

A Correct.

Q State whether or not you have calculated the area between A. B. C. and D, as indicated here by your imaginary lines, 25 ft. either side of the vein of the Red Top Claim.

A I have. It is approximately 6650 square feet—43560 ft. being a square acre.

Q Approximately what portion of an acre is it?

A Approximately one-sixth or one-seventh of an acre—less than one-half—there are 43000 ft. and over in an acre, and that contains 6650.

Q You have indicated that the survey was commenced January 12th, 1922 and finished January 14th, 1922. Signed by yourself, Alois Friedrich. William F. TenEych, head chainman. Did Mr. TenEych assist you in that measuring?

A Yes.

Q As head chainman?

A Yes sir.

Q And John Hamilton, rear chainman?

A Yes.

Q Is that the same John Hamilton you spoke of as owning the claim adjoining?

A Yes sir.

Q Towards the left part of this map there is a corner indicated as the northwest corner of Campbell and Tobin location which seems to be the same point as is indicated above as the southwest corner of the Red Top Claim.

A They have tied directly on to Mr. Quigley's corner post. One point serves for both as I couldn't indicate it very well otherwise.

Q The two posts are tied together?

A Yes sir.

Q One is Quigley's Red Top Lode and the other Campbell and Tobin?

A Yes.

Q Now, going over to the southeast corner of the Red Top Claim, you have indicated the same corner as the northeast corner of Campbell and Tobin.

A The same condition exists.

Q Now, as I understand it, that line between those two corners indicates the southerly end line of the Quigley Red Top Claim?

A Correct.

Q Or the lower end line?

A The lower end line.

Q The same line indicates the upper end line of the Campbell and Tobin location.

A Correct.

Q And, according to measurement on one side and your estimate of 300 ft. on the other side, the claim would be approximately—each of those locations would be 620 ft. wide?

A Very close.

Q Did you see the point of discovery and location notice of the plaintiff, William Grant for the Hillside Lode Claim on the ground?

A I saw his three stakes and the center stake.

Q Do you know what the center stake represented?

A I never went near to examine them close, but he called my strict attention to his name and location, Hillside Lode Claim.

Q Was there a stake on either side of that discovery post?

A There was one approximately 25 ft. on each side of the lode.

Q You saw three posts and you say the distance between the two extremes was approximately 50 ft.—50ft. between the two extremes and approximately 25 ft. from the center?

A Yes.

Q Using those posts as the distances that you have indicated did you draw the approximate side lines of the Hillside Lode Claim upon this map?

A I did.

Q And did you draw it as the approximate side lines of the plaintiff's quartz location, known as the Hillside Lode Claim?

A The Hillside Lode Claim, yes.

Q But they are not the result of absolute measurement?

A No, those lines are imaginary, merely a continuation of the Quigley lode.

Q They were put there on my request and are not based on measurements?

A They are very nearly correct.

Q Were you down below here to the end stakes of Grant's quartz location?

A No sir.

Q Were you down to the end lines of the Campbell and Tobin quartz location?

A No sir.

Q You didn't make any professional observations or measurements below the lower side line of the placer claim?

A No sir.

Q You have drawn here two lines which would be extensions of the side lines of the Quigley location, and one side you have indicated as the side line of the Campbell and Tobin location. Is that approximately correct?

A It is approximately correct because I have not gone to either end post and merely squared out from the end lines of Quigley's location.

Q The upper end line of the Campbell and Tobin claim as indicated is correct?

A That is correct.

Q And at that point at least Campbell and Tobin's quartz claim is of the same width as the lower end line of Quigley.

A Exactly.

MR. STEVENS: We introduce this plat in evidence.

(No objection made and plat is admitted and marked Plaintiff's Exhibit A)

MR. STEVENS: This is all that I want to ask this witness at this time—just to introduce the plat and his survey—but I would like to recall him later, if there is no objection, on some other matters.

COURT: I presume there is no objection.

Cross Examination

BY MR. ROTH:

Q You state that you (outside of this survey that you made of the so-called Hillside Bench Claim) had been acquainted with that ground for some time?

A I did.

Q How long?

A The lay of the ground I have known for two years anyway. I am not speaking of the claim itself.

Q I am speaking of the claim itself—the placer claim.

A I do not know of the placer claim not for over twelve months.

Q You have known it twelve months?

A I have known it that length of time.

Q Did you see any of the stakes as long ago as twelve months?

A The lower two I have.

Q When you speak of the lower two what do you mean?

A Nos. 1 and 2.

Q Did you go to those stakes twelve months ago?

A Not deliberately—I run across stake No. 1.

Q When was it, the first time?

A I couldn't repeat the date—it was a case of going fishing down the river.

Q What was the first date, approximately?

A Almost impossible for me to say—it was last

summer some time—couldn't say exactly—some where in July.

Q July 1921?

A No, it was 1920. I came out in July 1921—it was somewhere in July or August 1920.

Q Of 1920?

A 1920.

Q You run across stake No. 1?

A No. 1.

Q What was on the stake at that time?

A I don't think I stopped to read it.

Q Did you try to read it?

A Don't think I did at that time.

Q Do you recollect seeing anything on it?

A No, do not recollect seeing anything.

Q When was the first time you saw stake No. 2?

A Somewhere near that time—was coming across from Mr. Haney's to Mr. Quigley's.

Q Did you examine it?

A I did not.

Q Did you see any name on it?

A No sir.

Q When did you first see stake you have marked corner No. 3?

A That was January 12th of this year.

Q That was the first time?

A That upper stake, yes.

Q Just exactly what was written on that, from your field notes?

A I did not take field notes of the writing on

that stake because it is indistinct. As I said in my former statement, you can merely read on there "April 16" or "19" (couldn't say positively) "1920. Stake No. 3". That is all I could read.

Q "Stake No. 3". That is written?

A That is written on there.

Q How does it come you did not make a memorandum in your field notes?

A There were two other witnesses when we read it.

Q And as an engineer, don't you think it is proper to put it down in your field notes?

A I probably should have taken it down in field notes.

Q How old did that stake seem to be?

A Well, it seemed to be considerable over a year old from the color—that is all you can judge from—it was considerably weathered.

Q What kind of wood is it?

A Spruce.

Q Driven in the ground?

A On some rocks.

Q What size is it?

A From two and one-half to three inches.

Q Did you make any field notes of the size of the stake? Did you measure it?

A No, I did not.

Q Why didn't you measure it?

A I did not consider the size of the stake of sufficient necessity to measure. Am usually very good at getting measurements of that kind.

Q You as an engineer don't take exact measurements?

A Oh, of other things-but the size of a stake-

Q How high was it?

A Approximately three feet.

Q Only approximately? You did not measure?

A No sir, I did not.

Q Was it hewed on four sides?

A Yes sir.

Q Blazed on four sides?

A Yes sir.

Q That stake should have everything written on it within the last two years.

A Yes, it should have.

Q You think everything on there is legible that was put on there?

A It should be as legible as it ever was.

Q All you saw was corner No. 3, and what else?

A "April" either "16" or "19", I couldn't tell which, "1920".

Q Nothing else?

A No.

Q Going up to stake you have marked No. 4. What was written on that stake? Have you field notes?

A No, I have no field notes-merely took initial stake. It reads 660 ft. with an arrow pointing down hill. Stake No. 4. That is all.

Q Nothing else on the stake?

A No.

Q Are you sure there is nothing else?

A Almost sure.

Q Isn't it written there, "1550 ft. straight up, and "1550 ft. straight down?"

A No sir, I haven't seen it.

Q You saw everything on there?

A I might have over-looked something. Yes, that is all I can testify to, or would testify to.

Q You wouldn't testify that it wasn't on that stake?

A I wouldn't swear to it, no.

Q You have something here marked corner No. 5. What is there?

A It is an instrument point.

Q There isn't any stake there?

A No sir.

Q There wasn't any stake there, and that point is one you put there, and there is absolutely nothing there?

A No sir.

MR. STEVENS: Didn't you put something on the ground?

MR. ROTH: Didn't you put an instrument point there that is there now?

A An instrument stake, yes sir.

Q Where is this stake or this post you have marked corner No. 3 with reference to the road that runs around there from Haney's claim?

A Just a little above the road.

Q About how far?

A I wouldn't attempt to say.

Q You are pretty good at estimating, give us an estimate on that.

A It should be between thirty and forty feet.

Q You went by there on that Haney road a year ago?

A Not on that hillside road.

Q When is the last time you went over that road that I am referring to now and we are talking about before you surveyed the ground here in January?

A I don't remember when I went by that stake—not for some time because Mr. Haney went out—and I visited with him—I don't remember since then when I went down that particular road.

Q When did you visit Mr. Haney?

A I went up there a year ago in the fall of the year.

Q At that time you went over this road?

A Yes.

Q Did you see this stake?

A I don't remember. I wasn't looking for it.

Q You didn't see it?

A No.

Q When did you first go to the Quigley tunnel?

A Have been through there so often I don't remember the first time.

Q With reference to the time he started the tunnel?

A He must have started somewhere along in February a year ago. He was then in approximately twenty or thirty feet. I was in Fairbanks when Quigley started.

Q He was in approximately thirty feet when you got there?

A Yes, somewhere near that.

Q What did you see in the tunnel when you saw it the first time?

A I saw his lode exposed, of course.

Q Right at the mouth of the tunnel?

A At a considerable depth, in twenty or thirty feet.

Q Did he have some timber in?

A Yes.

Q Did the timbers shut off the view of the lode?

A They do.

Q So you don't know really from your own knowledge how close to the mouth of the tunnel that lode extends?

A No sir.

Q In other words, you don't know how far he drove the tunnel before he hit the lode.

A No sir.

Q At that time—prior to that time, have you ever seen that stake you have marked on there as corner No. 4 post?

A I don't think I remember of ever seeing it or looking for it. You would have to look very sharp to see it.

Q It is back on the hill above Quigley's house?

A Approximately 140 ft. above Quigley's house.

Q At the time you first saw that lode in the tunnel there of Quigley's, did you know that the mouth of that tunnel was inside of Grant's so-called placer claim as staked on the ground?

MR. STEVENS: Objection on account of assuming on the part of counsel that it was.

MR. ROTH: At the time you first saw the mouth of that tunnel, did you know that the mouth of the tunnel was inside of that placer claim as it was staked?

A —Mr. Quigley—(interrupted)

(objection by plaintiff on account of asuming that it was inside of placer claim. Mr. Roth withdraws question.)

Q You have a dotted line here in colored ink which seemingly marks the exterior boundaries or side lines of a claim which you have marked the "Hillside Lode Claim." What do those dotted lines represent?

A They represent 25 ft. each side of the supposed lode.

Q How did you get the supposed lode and locate it as an engineer?

A From back siting Mr. Quigley's location.

Q How far did you take back site of Mr. Quigley's location?

A Up to discovery post from the mouth of the tunnel.

Q To discovery post?

A Yes.

Q And after you extended that line from the mouth of his tunnel—I mean from his discovery post through the mouth of the tunnel—that represents the center—that line extended would be the center of these dotted lines you have there?

A Correct.

Q And that as you have it there, is the true direction of the strike of Quigley's lode?

A Correct.

MR. STEVENS: Providing the lode runs straight.

MR. ROTH: We object to counsel testifying.

Q Mr. Friedrich, this point you have marked here, "Campbell and Tobin shaft" is directly in line with this line you have made there as the strike of Quigley's lode?

A No sir.

Q How far off is it?

A Ten feet.

Q Do you show it 10 ft. off?

A Just about.

Q You show it about 10 ft. off?

A Approximately.

Q Do you know where this so-called Hillside Lode Claim of plaintiff's here goes after it goes off his Hillside Bench Claim?

A No sir, I do not.

Q I understood you to say in response to Mr. Stevens' that that was the claim of Jack Hamilton-you know it because Jack Hamilton took and showed you the stakes. That is the placer claim of Jack Hamilton?

A Yes.

Q And this so-called lode claim of plaintiff extends over the placer claim?

A It must if it is staked 1500 ft. long.

Q Do you know that it goes over Hamilton's placer claim?

A I do not.

Q Do you know that it does not?

A No sir.

Q You don't know one way or the other?

A No sir.

Q Why did you set that post which is marked No. 5 there?

A To mark the point of 660 ft.

Q Why did you mark that point?

A For the simple reason that Mr. Grant claimed it, and I marked approximately where it should have been.

Q Is that why you did it? Didn't Mr. Grant tell you to do it?

A He told me nothing of the kind—Mr. Grant was willing—but I merely wanted to mark the 660 ft. point.

Q When you did mark it, what did Mr. Grant say?

A I don't remember any conversation—he wasn't there, he went out to get witnesses.

Q You did that at your own suggestion?

A I did.

Q These other points you have marked here, hole 10 ft. deep, hole 8 ft., hole 7 ft., hole 6 ft., deep, and so on—those holes you say they were there approximately in the—,interrupted)

A As they are placed.

Q They are all within what distance of this point you have marked there that would indicate the strike of Quigley's lode? How close are they to that line?

A Some are out as far as 170 ft., others within 12 ft. or so. Quite a number are right close and oth-

ers are farther out from the lode, some are 70 ft., some are 10 ft., 12 ft., and 27 ft.

Q How many holes did you find besides the Campbell and Tobin shaft?

A Nine, or ten inclusive of Campbell and Tobin.

Q Now this distance between post No. 3 and corner No. 5 you computed by triangulation?

A You mean this distance between here and here?

Q No., between 3 and 5

A Correct.

Q What was the degree of this angle up here at corner post No. 4?

A 84.30

Q What was the angle at corner No. 5 of that triangle that you were triangulating?

A What angle do you mean?

Q Corner No. 5.

A I have it at home—not here—all figures that I copied.

Q Do you remember the number of degrees?

A In the neighborhood of five, not exact to the second, but could give it correctly.

Q Now you say those measurements that you say are accurate, you mean by that your chainman measured and called out the measurements?

A Correct.

Q You didn't go and check up each measurement as made?

A No sir.

Q You noted as the chainman called?

A Chainman gave measurements as we went

along—we set each point by instrument.

Q You stayed at the instrument?

A I had to stay at the instrument in order to line in the head chainman.

Q That is just exactly what I am getting at. In measuring up that hill, how did you take measurements to get them accurate?

A Would get them as near horizontal as possible.

Q You didn't have a plumb there to plumb with?

A No sir.

Q You didn't drive any stakes to mark the point from which you broke chain?

A Yes, we had small willow stakes made for the purpose to stake each point.

Q The rear chainman picking them up as they went along?

A Correct.

Q Have you notes there showing how far they went without breaking chain—how close breaks were together?

A 100 ft.

Q I am talking about how they broke chain between points.

A They didn't break chain anywhere, took a 100 ft. chain all the way through.

Q Did you take any levels of that hillside?

A I did.

Q What was the result of leveling there?

A The level at this point, northwest from post No. 1 to post No. 4 is thirteen degrees on the vertical angle.

Q What is the difference in elevation?

A I haven't got the figures here, but have them home.

Q Could you approximate it for me?

A Not now.

Q You say how many degrees?

A Thirteen degrees.

Q Even?

A Even.

Q To post No. 4?

A Instrument setting at initial post to post No. 4.

Q Did you take the elevation between the Campbell and Tobin shaft and the Quigley tunnel?

A No sir.

Q Did you take any other elevations there on that line between post No. 1 and post No. 4?

A No sir.

Q How did you take that measurement of that angle?

A By measuring in on vertical arc of my instrument. of course, taking point seven above, measuring telescope on front.

Q What did you take site on up there?

A On stake—on bottom of stake, the instrument was setting very close to the snow at the time.

Q Wasn't that stake on a rock pile?

A Yes.

Q Which stake?

A Stake No. 4.

Q Would that represent the true elevation—I mean the true slope of that hill?

A No, that is an average from post No. 1 to post No. 4.

Q But post No. 4 stuck up on a cliff of rock?

A Yes, elevation rises gradually until it gets up to Quigley's house where it begins to get steeper. Post sets at bottom of cliff.

Q Now that stake at corner No. 4, did that—how did that appear with reference to age?

A Approximately the same as post No. 3.

Q Now what—you have given me what was written on stake No. 4. Was there any reason—from the appearance of the timber, was there any reason why whatever was marked there within the last two years should not be on there now?

A No.

(Plaintiff objects as incompetent testimony and Court agrees that it is hardly competent and sustains objection)

Q How many places on this—at the time you did this survey here did you see where Quigley's lode was exposed?

A It is only at the discovery, and the mouth of the tunnel it isn't visible—the discovery is the only one you can see lode exposed. I haven't seen it any where between.

Q Did you make any effort to find out?

A No sir.

Q How is the slope between what you have marked No. 2 post and No. 3 post?

A Twenty degrees and two minutes.

Q That is pretty steep?

A Yes sir, very steep.

Q Did you take any elevations to show how high this No. 2 post is above Moose Creek?

A No, I did not take that elevation.

Q You didn't take any elevations down to Moose Creek?

A No sir, at no time.

Q You couldn't give us an idea?

A No, only judgment.

Q Did I understand you to say that Quigley's house is below this line that you have marked between corner No. 5 and corner No. 3 post?

A It is just about, I think 8 ft. or 10 ft.—I couldn't say positively—below that line.

Q How much of that did you estimate—how much of the placer claim which is designated, "Hill-side Bench Claim" is outside of the Red Top Lode Claim and the claim of these defendants?

A No, I have not.

Q You made no estimation?

A No.

Q And outside of those holes you have on there, you found no evidence of work having been done on that placer claim?

A Only the building of a cabin marked on there. The only work I found done is marked there.

MR. ROTH: That is all.

Re-direct Examination

BY MR. STEVENS:

Q Did I understand you to state in answer to Mr. Roth's questions that the writing on any of those stakes which apparently mark the boundary lines of the placer claim ought to be just as legible now as when first put there?

A Not as distinct, but it ought to be nearly as

visible, but not as good as then.

Q Do you pretend to say how long writing ought to be plain on a stake when exposed to Alaska weather?

A I wouldn't think it would last for years.

Q I want to know this—whether you know how—whether or not it might depend upon which side the writing was—whether on the south, or north, east or west?

A That would make a difference—weather conditions make a difference.

Q Wouldn't it make a difference how long the writing would remain legible as to whether or not the writing was put there on an old, dead piece of timber or stake, or whether it might have been written on a fresh blazed, or a green tree?

A Oh yes, naturally it would.

Q You don't pretend to say whether it was a green or an old and dry stake when placed there?

A No, I wouldn't make any statement whether it was green or dry when put there, but it looks as though it was dry.

Q Looks as though it was dry. Explain what you mean—how can you tell by the looks of a stake several years old whether it was green when put there or whether it was dry when put there.

A If it is spruce, the bark will dry and adhere—if a dry one, it usually peels off—peels off if an old dry tree but if it is put there green under those conditions, it will stick and adhere for some time.

Q If it was put there green with the bark on of course in time the bark will dry and peel?

A Yes, but it will adhere much longer than if it was already dry.

Q Take as an illustration post No. 3. Do you know whether that was green when put there or dry?

A I wouldn't say.

Q Do you know whether it is cottonwood or spruce?

A Spruce.

Q What kind of wood was in No. 4?

A No. 4 was spruce the same as the other.

Q Do you know whether it was green or dry when put there?

A Couldn't say whether it was green or dry.

Q Which will last longer so far as being legible is concerned, writing put on a green post or writing put on a dry post?

A Have had no experience in that—wouldn't give any judgment.

Q You don't know anyone in this country who really knows?

A No.

Q Can you tell us approximately where this Haney road comes with reference to the placer claim—does it come from up the hill down?

A It comes from the eastward towards this placer claim and down the hill.

Q Is it the same road used by Tom Aitken in hauling ore from up hill?

A It comes in and joins somewhere in the placer claim.

Q Where the two roads join?

A Yes.

Q Do the two roads join as they come down a steep hill?

A No, it is pretty flat down where they join.

Q State whether or not it is a fact that the lower portion of this Hillside Bench Claim is pretty flat compared with the balance.

(Defendants' counsel objects to question and is sustained by the Court)

Q As I understand you from answers to Mr. Roth, you spoke of taking the elevation from initial post to post No. 4 which I believe you said was some thirty degrees?

A Thirteen degrees.

Q And that representing an average? What do you mean?

A It rises higher in the rear than in the front.

Q Where does it start approximately between post No. 1 and post No. 4—where does it start to rise steep?

A A little below Mr. Quigley's house.

Q Do I understand you—it is comparatively level or a gradual rise from the initial stake up to about Quigley's house?

(Defendants' counsel objects to question and Mr. Stevens agrees to refrain.)

Q What do you wish me to understand as regards the topography of that claim from the initial stake to Quigley's house?

MR. ROTH: We object—

COURT: Let the witness describe it.

A It is approximately fairly level for the first

150 ft., from there it gradually rises steeper and steeper.

Q Until it gets to Quigley's house?

A Clean up there.

Q Between the initial stake and Quigley's house?

A Between the initial stake and Quigley's house—it is fairly level for 150 ft. then it rises steeper

Q Commencing from where it rises, it is very much steeper just below Quigley's house up to corner post No. 4?

A Very steep.

Q Describe the slant or the topography of the ground between post No. 2 and post No. 3.

A For 200 ft. approximately it is comparatively level, from there it rises steeper and steeper until it reaches post No. 3.

Q Mr. Friedrich, in answer to Mr. Roth's questions you described this line from Quigley's discovery down to the mouth of the tunnel as being the center of the supposed vein, did you not?

A Yes sir.

Q And from Mr. Quigley's lode you extended that line in a straight line?

A Yes sir.

Q You haven't any knowledge whether that ledge runs straight or not?

(Mr. Roth objects to question as leading and is sustained by the Court)

Q Have you any knowledge whether or not the center of the vein would be in a straight line?

A None whatever.

Q You have also extended that same line—imaginary line—supposed to be the center of the ledge, straight down to indicate the center of Billy Grant's Hillside Lode Claim, have you not?

A Yes sir.

Q I presume the same is true—you have no actual knowledge what direction the vein takes?

A None at all.

Q You have no knowledge that the vein extends there at all, have you?

A No sir.

Q In answer to Mr. Roth's questions you have stated that the Grant quartz location indicated here as the Hillside Lode runs entirely through the placer claim adjoining, which would be Hamilton's location, and goes through into probably the next placer claim?

A It would be probable. I haven't gone that far—haven't examined it and don't know.

Q Grant's location runs 1500 ft. down hill in a southwesterly direction from the point of discovery, does it not?

A I do not know.

Q Did you examine Mr. Grant's location notice?

A I didn't examine it.

Q If it called for 1500 ft. down hill, it would go down through and into those other claims, wouldn't it?

A It would have to, yes.

Q If Campbell and Tobin's quart claim which they indicate here as their location runs 1470 ft. down hill along the supposed strike of the lode, it would

also run through these other placer claims?

MR. ROTH: We acknowledge that.

MR. STEVENS: That is all.

MR. ROTH: That is all.

Session 10:00 A. M. Thursday, February 2nd, 1922

WILLIAM GRANT, called as a witness in his own behalf, after being duly sworn, testified:

Direct Examination

BY MR. STEVENS:

Q State your name.

A William Grant.

Q Are you the plaintiff in this case?

A Yes sir.

Q Do you know the defendant, Mr. Campbell?

A Yes sir.

Q About how many years have you known him?

A Five or six years.

Q Do you know Mr. Tobin?

A Yes sir.

Q How long have you known Mr. Tobin?

A Three years.

Q How old are you?

A Sixty-two.

Q Where were you born?

A Scotland.

Q When did you come to this country?

A In '82.

Q Are you a citizen of the United States?

A Yes sir.

Q How long have you been a citizen?

A Since '92.

Q Were you naturalized under the laws of the United States?

A Yes sir.

Q Where?

A Aspin, Colorado.

Q In 1892?

A Yes sir.

Q What has been your chief occupation for several years past?

A Mining.

Q When did you come to Alaska?

A In 1900.

Q Have you been in Alaska ever since?

A With the exception of two years in Dawson and nine months outside.

Q What years were you in Dawson?

A '91 and '92.

Q You mean 1901 and 1902?

A Yes sir.

Q How long have you lived in the Tanana Valley country?

A Nineteen years.

Q Have you been engaged in mining and prospecting ever since you have been in Alaska?

A Yes sir.

Q Where did you come from when you came to Alaska?

A Came from Cripple Creek, Colorado.

Q How long did you live in Colorado—about?

A Seventeen years.

Q What was your business while living in Colorado?

A Mining—working in mines and prospecting.

Q What kind of mines?

A Quartz.

Q Did you ever have any experience in placer mining or prospecting in Colorado?

A No sir.

Q There is very little placer in Colorado?

A Yes sir.

Q Chief mining in Colorado is quartz?

A Yes sir.

Q Have you had any experience in placer mining in Alaska?

A Yes sir.

Q Have you had experience in quartz mining in Alaska?

A Some, yes.

Q Where have you been engaged in quartz mining in Alaska?

A With Mr. Rhodes.

Q In the Rhodes-Hall mines?

A Yes, at the head of Cleary.

Q How long were you in the Rhodes-Hall mines?

A Two years.

Q In what capacity?

A As common laborer—miner.

Q Did you have experience in various lines—various branches of quartz mining?

A Yes sir.

Q Where do you live now?

A In Fairbanks.

Q Have you been living in the Kantishna?

A Yes sir.

Q How long were you in the Kantishna country?

A Two years and a half.

Q What have you been doing since going in to the Kantishna country?

A I have been mining for Mr. Aitken—T. P. Aitken.

Q What kind of mining was Mr. Aitken doing?

A Quartz mining.

Q In what capacity did you work for Tom Aitken in the Kantishna?

A Had charge of it.

Q You had charge of his works?

A Yes sir.

Q In other words, were you superintendent or foreman, or what did you call yourself?

A Yes, I was foreman working as boss.

Q Were you interested in any of his enterprises there except as an employee?

A No sir.

Q You received a salary for your labor?

A Yes sir.

Q You had no interest in any of Mr. Aitken's ground or option?

A No sir.

Q Then how long about have you been engaged in mining any place?

A For forty years or over.

Q Over forty year?

A Yes sir.

Q You, of course, are acquainted with the ground —the property in dispute in this case, are you not?

A Yes sir.

Q Have you any other mining claims or mining property excepting the property in dispute in this case in the Kantishna?

A Yes sir.

Q Is it quartz or placer?

A I have quartz and placer claims.

Q One quartz and one placer besides these?

A Yes sir.

Q Is that all?

A Yes sir, that is all.

Q Are they any where near this property?

A No, the quartz is on Copper Mountain about twenty five miles, and the placer is up Friday, towards the head of Friday Creek.

Q How far away is it from this placer claim?

A A mile and a half or two miles.

Q When did you first go upon the Hillside Bench Claim?

A The 10th day of September 1919.

Q How long had you been in the Kantishna country prior to September 10, 1919?

A Four months.

Q The ground in dispute I understand is on the right limit of Moose Creek, is it not?

A Yes sir.

Q Did you know anything about the character of the surrounding ground or claims on Moose Creek or Friday Creek before September 10, 1919?

A Yes sir.

Q Did you know at that time whether any placer ground had been discovered and located?

A Yes sir.

Q When you went on this ground September 10, 1919, describe just what you did, if anything, relative to initiating title for a placer mining claim.

A I was on the hill coming down to Hamilton's to borrow a box of candles and coming down through the draw I seen some dirt that looked different from anything else.

Q Describe where that was.

A Coming down to Hamilton's cabin.

Q Where was Hamilton's cabin?

A On Moose Creek.

Q The right limit of Moose Creek?

A No, the left limit of Moose Creek.

Q Your placer ground is on the right limit, isn't it?

A Yes sir.

Q How far was Hamilton's cabin from the place that you went on the Hillside Placer claim?

A A mile and a half.

Q What I want you to do if you can is to describe where this draw was where you went.

A It isn't much of a draw, just a depression in the hill.

Q Have you examined this map, Plaintiff's Exhibit A?

A Yes sir.

Q I will ask you to examine Plaintiff's Exhibit A, which has been identified in this case, and state whether on that map you recognize the point which is indicated thereon as corner No. 1 post. Do you

recognize that?

A Yes sir.

Q Will call your attention to corner post No. 2. Do you recognize that?

A Yes sir.

Q And corner post No. 3. Do you recognize that?

A Yes sir.

Q And corner post No. 4. Do you recognize that?

A Yes sir.

Q And a point down here called corner No. 5. You recognize those points?

A Yes sir.

Q Within the area of those points in large letters is marked "Hillside Bench Claim". Does that represent the claim as originally staked?

A Yes sir.

(Mr. Roth makes objection on account of being a leading question. Court instructs that answer be stricken out. Mr. Stevens takes exception and exception allowed.)

Q If that map is correct with reference to those four corners which you say you recognize, would you be able to point out to the jury on that map the location or approximately the location of the place that you spoke of as doing some work or prospecting on the placer Claim?

A Yes sir.

Q I call your attention to the red line there indicated on the map as being Quigley's location, also Quigley's discovery north of and outside of the boundaries of the placer claim according to the map,

and also the place designated on the map as being the mouth of Quigley's tunnel; coming on down southwesterly from that, I call your attention to the Quigley southwesterly end line. If the map is approximately correct, are you able to point out the place where you went on about September 10, 1919. Take the pointer so the jury can see and point out as near as you can the location that you did any prospecting there on September 10, 1919.

A Here in front of "Cabin" (pointing)

Q That place marked "cabin" you recognize as being approximately in the proper location?

A Yes sir.

Q That cabin was not built at that time, was it?

A No sir.

Q When did you build it?

A Last fall.

Q The fall of 1921?

A Yes sir.

Q Prior to that time did you have a tent about the same location?

A Yes, 5 feet above the cabin uphill.

Q When you went there September 10, 1919, did you do any prospecting or panning?

A Yes, I prospected and panned.

Q Where?

A Right in front of the "cabin", I panned there, dug two or three holes eighteen inches or a foot deep—there was gold in both pans.

Q Was that all the panning you did that day?

A All the panning I did.

Q That is considerable distance south from what

is designated on the map as the southerly end line of Quigley's location?

A One hundred feet.

Q It is below what is now Quigley's claim?

A Yes sir.

Q About how many pans did you pan?

A I panned three.

Q What was character of the substance that you panned?

A There was quite a bit of concentrated gold.

Q What was the formation generally of the material that you panned?

A Mostly broken up schist and slide—very rough matter, some gravel through it.

Q Any muck?

A A little. It was a high point so there was very little muck.

Q Any sand and gravel?

A Some sand and gravel.

Q Broken up schist?

A Yes sir.

Q You panned three pans. Describe whether or not you found any gold in the first pan.

A I found gold in all of them.

Q How much gold about did you find in those pans?

A There was a couple of pans that went fairly good—had no way of weighing it but would judge it went over one-half cent, and the other was color.

Q You mean the pans you judge would go over one-half cent each, and the third pan you got color?

A Yes sir.

Q What did the gold look like.

A Well, it looked like most of it—was fairly coarse and fairly rough.

Q At that time you stated you knew something about the character of the country in the vicinity of those creeks?

A Yes sir.

Q Will ask you to state whether or not you knew at that time that any placer gold had been found in substantial quantities or paying quantities on Moose Creek.

A Yes, from what I understand there has been men working there the last fifteen years.

Q You knew that at that time?

A Yes, at that time.

Q Had there been any work done on Friday Creek?

A Yes, Friday Creek has been pretty well worked out.

Q How long then had it been worked?

A Since the strike in 1905.

Q For placer purposes?

A Yes sir.

Q Was the ground on Moose Creek that you spoke of worked for placer purposes?

A Yes sir.

Q About how far distant was the down hill side line of your placer claim—or your initial stake we will say—how far is it from your initial stake, approximately, straight down to Moose Creek?

A From Moose Creek proper, I judge it is close to half a mile—between a quarter and a half mile

to Moose Creek proper.

Q How far was initial stake, going in a southerly or southwesterly direction—how far was initial stake from Friday Creek straight across?

A 350 ft. or 300 ft.

Q You know now the location of the claim adjoining you on the south, do you?

A Yes sir.

Q What is it called?

A The Horse Shoe Bench.

Q And who owns that Horse Shoe Bench?

A Mr. Hamilton.

Q Was Mr. Hamilton's placer claim a creek claim or a bench claim?

A Bench claim.

Q Was it the first or second bench.

A The first bench.

Q Your claim is the second bench?

A Yes sir.

Q Was there any claim adjoining your claim towards Friday Creek.

A Yes sir.

Q Was that a creek claim or a bench claim?

A A creek claim.

Q Counting from Friday Creek your claim would be the first tier on that limit. Is that true?

A Yes sir. The end of the claim butts up towards Friday, but the claim is extended up Moose.

Q There is a junction down considerably off your claim where Friday Creek runs into Moose Creek. Is that true?

A Yes sir.

Q Now, Mr. Grant, I ask you as a mining man, a man of mining experience, whether or not at the time that you panned those three pans and found gold at the location you have described, did you take into consideration, as a prospector, the character of the ground, its formation, the location with reference to other placer claims, and the amount of gold you found in the pans—did you take it all in consideration?

A Yes sir.

Q Will ask you whether or not in your judgment an ordinarily prudent man, not necessarily a miner, after having found the amount of gold that you found in the locality you found it, and taking into consideration the surroundings and character of the country—whether an ordinarily prudent man would be justified in expending further labor or money in developing the property for placer purposes?

A He would.

Q Did you locate the ground?

A Not then, no sir.

Q I asked if you located it?

(Mr. Roth objects as calling for conclusion of witness, and Mr. Stevens agreed to modify question.)

Q Did you at any time thereafter take any further steps with reference to locating the ground?

A Yes sir.

Q When did you take the next step to locate that ground as a placer claim?

A April 19, 1920.

Q Explain to the jury why it was you did not locate, or attempt to locate or proceed to locate this

ground as a placer claim until after the lapse of several months.

MR. ROTH: Objected to on account of being irrelevant, incompetent and immaterial.

COURT: It would be in order to show if he actually did locate the ground thereafter.

BY MR. STEVENS:

Q Describe what, if anything, you did in April 1920 with reference to making location of the Hill-side Bench Claim.

A I came down here to initial stake—(interrupted)

Q You mean the point indicated on the map as stake No. 1?

A Yes sir.

Q What did you find there, if anything?

A I found a stake.

Q What kind of a stake was there?

A A stake squared on four sides.

Q How high was it above ground, about?

A About four feet, I judge.

Q And about what was the diameter?

A Four or five inches.

Q What was its general appearance with reference to age?

A It was an old post.

Q Did it contain any writing?

A No sir.

Q What else did you do when you went there—was any one with you?

A Yes sir.

Q Who?

A Mr. Quigley and Mr. Hamilton.

Q Mr. J. B. Quigley?

A Yes sir, and Mr. Hamilton.

Q What Mr. Hamilton?

A John Hamilton.

Q They were with you at the initial post?

A Yes sir.

Q Was the John Hamilton, or Jack Hamilton, you speak of the man who is reputed to own Horse Shoe Placer Claim on the south?

A Yes sir.

Q Was Quigley the same Quigley that made the discovery and owns the quartz claim above?

A Yes sir.

Q State what occurred at that stake which is indicated on the map as stake No. 1.

A I wrote my name on it, located it, claiming—
(interrupted)

Q Did you ascertain at that time whose stake that was?

A Yes sir.

Q Whose was it?

A John Hamilton's.

Q State whether or not John Hamilton at that time recognized it as one of his corner stakes to the Horse Shoe Claim.

(Mr. Roth objects account irrelevant, incompetent and immaterial. Objection over-ruled. Mr. Roth takes exception and exception allowed.)

Q I asked whether or not Hamilton at that time

recognized and claimed that that was one of his corner stakes.

A Yes sir.

Q You have already stated that you wrote something on one side of the stake?

A Yes sir.

Q Which side?

A The side towards the Hillside Bench Claim.

Q The side facing the hill, or the northeast?

A Northeast.

Q Was Hamilton there when you wrote on the stake?

A Yes sir.

Q Did he make any objection to you adopting his stake?

A No sir.

Q Did he give you permission?

A Yes sir.

(Mr. Roth objects to question account irrelevant, incompetent and immaterial and wishes objection to stand before the answer. Objection admitted before the answer. but over-ruled. Mr. Roth takes exception and exception is allowed.)

Q Are you able to state in substance what you wrote on stake No. 1?

A Yes sir.

Q Tell us what you wrote, as near as you can, on that stake at that time.

A "April 19, 1921"—(Interrupted)

Q Mr. Grant, take your time, it is well known that it was not 1921 at all. Don't say anything you don't realize. Start again and tell us the substance

of what you wrote on the stake.

A "April 19, 1920, I claim 1320 ft. up Moose Creek to post No. 2 and 660 ft. up hill."

Q Did you give the claim any—(Interrupted)

A Was trying to think what I did put on it.

Q No one expects the exact language.

A It was staked for placer mining purposes.

Q Did you put your name on it?

A Yes sir.

Q What name did you put?

A William Grant, locator.

Q Did you put the name of the claim on it?

A Yes sir.

Q What name?

A Hillside Bench claim.

Q Did you state that was corner—state what corner it was.

A Yes sir, corner No. 1.

Q Did you indicate on the stake whether or not it was the initial stake?

A Yes sir.

Q What did you indicate?

A I wrote "initial stake of the Hill Bench Placer Mining Claim."

Q Did you put any arrows pointing in any direction?

A I put on two.

Q Describe which way they pointed.

A One pointed up hill and the other up Moose Creek.

Q Was that done in the presence of Quigley and Hamilton?

A I think so.

Q At any rate they were there when you first went down?

A They were there when I started to stake.

Q What did you do when you got through with initial post, or post No. 1?

A I followed them up to post No. 2.

Q Would that be up Moose Creek?

A Yes sir.

Q You went up behind Mr. Hamilton and Mr. Quigley?

A Yes sir.

Q How far behind?

A I was on snow shoes and they were quite a ways ahead.

Q Where did they go?

A To post No. 2.

Q Was there a post there?

A Yes sir.

Q Describe that post as near, as you can.

A That post was leaning about like that (indicating) towards Moose.

Q How long was it above the ground?

A Between three and four feet.

Q How big a stick was it?

A Over three inches in diameter.

Q Was it squared?

A Squared on four sides.

Q Did Quigley and Hamilton stop when they got up to post No. 2?

A Yes sir.

Q Did they wait there until you came up?

A Yes sir.

Q What was the appearance of that post with reference to age, if you know?

A There was nothing visible on it—looked as if it was weather beaten.

Q As though it had been there a long time?

A Yes sir.

Q Couldn't see any writing?

A No sir.

Q You may state whether or not Mr. Hamilton recognized or claimed that to be one of the stakes of his claim adjoining.

(Mr. Roth Objects account irrelevant, incompetent and immaterial. Objection over-ruled. Exception taken and allowed.)

A Yes, that was his other stake.

Q He recognized it as his other stake?

A Yes sir.

Q Did you write anything on that stake?

A Yes sir.

Q What did you put on it?

A "Stake No. 2, claiming 1320 ft. down Moose, 660 ft. up hill, for placer mining purposes"—also date

Q What date?

A April 19, 1920.

Q Did you put the name of the claim?

A Name of claim.

Q Did you put your own name on it?

A Yes sir.

Q Was Hamilton there when you wrote that?

A I don't know whether he was there or whether

he had gone.

Q Did he know you were adopting his stake?

(Mr. Roth objects account irrelevant, incompetent and immaterial. Objection sustained.)

Q Did Hamilton give you permission to use one side of his stakes?

(Mr. Roth objects account irrelevant, incompetent and immaterial. Objection over-ruled. Exception taken and allowed.)

A Yes sir.

Q On which side of the stake did you write?

A The up-hill side.

Q The side towards the inside of your claim?

A Yes sir.

Q Did you put any arrows on stake No. 2?

A Yes sir.

Q Describe what you put on there with reference to arrows.

A Two arrows—one pointing down and the other up.

Q What do you mean?

A Pointing down Moose—down stream.

Q Which way did it point—towards the initial stake?

A Yes sir.

Q And the other pointing up in the air?

A No, pointing up hill.

Q Those two stakes as I understand were established April 19, 1920. Did you do anything more that day with reference to staking?

A No sir.

Q Did you at that time measure the distance

from stake No. 1 to No. 2?

A No sir.

Q When did you take any further steps relative to staking the claim, if you did?

A The next day.

Q What did you do the next day?

A Went to corner No. 4.

Q That would be the place indicated on Plaintiff's Exhibit "A" as corner No. 4 post?

A Yes sir.

Q How did you get up there? Where did you come from and where did you get up?

A Was up on hill and came down.

Q Up hill here?

A Yes sir.

Q And came down hill. Did you travel the distance between post No. 1, your initial stake, up to No. 4 that day?

A No sir.

Q Did you measure or calculate the distance from your initial stake to No. 4?

A I guessed.

Q You didn't measure?

A No sir.

Q What kind of post did you establish there, if any? I mean post No. 4.

A That is the largest post in the bunch—that was close to six inches and over 3 ft. above ground.

Q You mean six inches in diameter?

A Yes sir.

Q Was that a new post or an old one?

A A new post.

Q You put that post there?

A Yes sir.

Q Did you square it or blaze it?

A Squared it.

Q On four sides?

A On four sides, yes.

Q Did you write anything on that post?

A Yes sir.

Q What did you write—the substance of it?

A Wrote the date, name of the claim—

Q What claim?

A Hillside Bench Claim—date of location and my name—

Q Did you put the number of the post?

A No. 4, yes.

Q Which side of the post did you put that on?

A The lower side.

Q The side towards the center of your location?

A Yes sir.

Q How did you fasten the post—the ground was frozen, wasn't it?

A Yes.

Q How did you fasten the post?

A That post, I took it up there where there was a cliff of rock and there was slide there and I took it up there and put it in slide and built rocks around. That is one reason why claim is so wide.

Q You took it up to a point where you could find slide rock to pile around it and hold it up. You couldn't drive it in the ground?

A No sir.

Q Is that post still remaining there?

A Yes sir.

Q Has it remained there ever since in the same condition you put it?

A That post has never been moved—it remains the same as I put it up.

Q Still surrounded by rocks?

A Yes sir.

Q Did you put any arrows on that post?

A Yes.

Q What arrows did you put on there. Describe them.

A One pointing down to initial post and the other pointed up stream to post No. 3.

Q As I understand you, at the time you put post No. 4 in, or corner post No. 4, you hadn't yet established post No. 3?

A No sir.

Q Have you described all that you did at post No. 4 at that time?

A Yes sir.

Q What else did you do, if anything?

A Went along hillside to post No. 3.

Q The same day?

A Same day.

Q How did you get over to post No. 3?

A I crawled along the hillside.

Q The hill is quite steep?

A Yes sir.

Q Did you have snowshoes on ?

A No sir.

Q Did you measure the distance from post No. 4 down where you stopped at post No. 3?

A No sir.

Q Did you calculate what the distance would be?

A Yes

Q It was a guess or supposition?

A Yes.

Q Did you travel the distance from post No. 2 to post No. 3?

A Not that day, no.

Q When you got to the point that you established as post No. 3, could you look back and see post No. 4?

A Yes sir.

Q Did you see it?

A I did, yes sir.

Q Could you at that time look down and see post No. 2?

A I could see all.

Q You did see post No. 2?

A Yes sir.

Q Did you calculate the distance would be about 660 ft. from where you stuck post No. 3 you had established down to post No. 2?

A Yes sir.

Q You calculated approximately 660 ft?

A Yes sir.

Q State whether or not you did at that time establish what is now indicated on the map as corner No. 3 post?

A Yes sir.

Q What kind of post did you put there?

A The same as No. 4, but smaller. Tied it to a bush.

Q How high was it above ground?

A Over three feet.

Q And how much in diameter?

A Three or four inches.

Q Did you square that stake?

A Yes sir.

Q Did you write anything on that stake?

A Yes sir.

Q What did you write?

A "April 20, 1920, northeast corner post of Hill-side Bench Placer Mining Claim."

Q Did you give it any number?

A No. 3, yes.

Q Did you sign your name?

A Yes, William Grant, locator.

Q Could you drive that in the ground?

A No sir.

Q You say you tied it to a bush?

A Tied it to a bush and there were some rocks alongside thawed out a little and got rocks and put around.

Q What did you tie it with?

A A String.

Q What else did you do that day, if anything?

A Nothing, went back up hill.

Q At the time you wrote on initial stake there as you have described, for the purpose of refreshing your memory, did you put on the initial stake the date of your discovery?

A I don't remember.

Q You put the date of posting the notice?

A Yes sir.

Q What other steps, if any, did you take with reference to perfecting your location?

A Not any.

Q That is on the ground. You may state whether or not thereafter you filed a record in the Kantishna Mining District, or mining precinct, a certificate of location.

A Yes sir.

Q I hand you a paper, Mr. Grant, containing long-hand writing and ask you to examine it. (Hands him paper) State whether or not that is written in your handwriting.

A No sir.

Q State whether or not it is your signature.

A Yes sir.

Q After reading it state whether or not you recognize that as being your location certificate for the placer claim in controversy in this suit. Before answering, turn it over and see the endorsements on the back. (Mr. Grant reads paper)

A Yes, that is what is on the post that—(Interrupted)

(Mr. Roth objects to answer as not being responsive to question. Court orders answer stricken out)

Q I asked you if you recognized that as the certificate of location that you filed on record.

A Yes sir.

MR. STEVENS: We offer this in evidence.

MR. ROTH: We object to the introduction of this document in evidence on the ground that same is irrelevant, incompetent and immaterial, not being in

accordance with the requirements of the Session Laws of 1915 which provide what a certificate of location must contain before a placer mining claim can be a valid placer mining claim. This is what I consider a very important objection and if the Court has any doubt on the proposition at all, I would like to be heard upon the law on this proposition. I consider it absolutely vital and consider it as not complying with the law at all. I would like to argue the proposition, if the Court has any doubt about the position I take.

COURT: What particular part of the notice do you object to?

MR. ROTH: I object specifically on two grounds; that it does not contain, does not set forth the description with reference to some natural object, permanent monument or well-known mining claim, together with a description of the boundaries thereof, so far as applied to the number of stakes or monuments; that is one of my specific objections. And the other is, it does not contain the date of the posting of the location notice. Those are two grounds. I have the authorities on the first ground I have stated that are absolutely in point—have been determined by Courts, and in my mind, under the law there is no question but that that notice of location, or certificate of location, does not comply with the law under decisions of the state courts and Supreme Court of the United States.

(Argument of the point admitted, and jury is excused until 2:00 P. M. during argument. Jury returns at 2:00 P. M. but is further excused until ar-

gument completed. 3:30 P. M. argument completed and jury returns. Court over-rules Mr. Roth's objection, allowing him an exception and notice of location is admitted in evidence and marked "Plaintiff's Exhibit B."

WILLIAM GRANT, re-called as witness in his own behalf, being heretofore duly sworn. testified:

Direct Examination, (Continued)

BY MR. STEVENS: (Recital of Plaintiff's Exhibit "B".)

"Notice of Location of Placer Claim.

"Notice is hereby given that I, Wm. Grant, "have discovered placer gold within the limits "of this claim and have this day posted this notice of Location at the point of discovery. I "claim 1320 feet in length by 660 feet in width "as marked on the ground, for placer mining "purposes. This claim shall be known as placer "mining claim, Hill Bench, opposite and on the "East side of Horseshoe placer mining claim "on the Right Limit of Moose Creek, Kantishna "precinct, Territory Alaska.

"Discovery made Sept. 10, 1919. Location notice "posted April 1920.

"Witness:

Wm. Grant

J. Hamilton.

Locator".

(Endorsement)

"No. 2885

"District of Alaska

"Fourth Judicial Division,—ss.

"

Filed for record at request of

"Wm. Grant, on the 12th day of July 1920 at—
"min. past 4.30 P. M. and recorded in Vol. 1,
"Gen., page 58.

" Kantishna Recording District.
(SEAL) C. Herbert Wilson. Per L. E. W.
Recorder."

BY MR. STEVENS:

Q Mr. Grant, This location certificate states that it is opposite and on the east side of Horseshoe Mining Claim on the right limit of Moose Creek, Kantishna Precinct. State whether or not the Horseshoe claim referred to in your location notice was or was not at that time a well known claim.

(Mr. Roth makes objection account question leading and suggestive. Objection sustained. Exception taken and allowed.)

Q I believe you have already stated that the Hamilton claim you tied on to was known as the Horseshoe Mining Claim?

A Yes sir.

Q Or Horseshoe Placer Claim?

A Yes sir.

Q The two stakes you tied on had the appearance of having been old stakes?

A Yes sir.

Q Did you know at the time whose mining claim it was—the Horseshoe claim—at the time you located?

A Yes sir.

Q Whose?

A John Hamilton's.

Q How long before that time did you know that

such a claim existed—about?

A I knew it existed in September before that when I made my discovery, but didn't know where it was.

Q You didn't know where the lines were?

A No.

Q How did you know it existed?

A I heard them talking about Hamilton's Bench.

Q You heard who talking?

A The people—most everyone understood there was a claim there.

Q The people generally understood and referred to that Hamilton Bench as being a placer claim?

A Yes sir.

Q You may state if you will—you say you knew the Hamilton Bench Claim, or the Horseshoe Claim, was in existence at the time you made your discovery in September 1919?

A Yes sir.

Q Did you know just where Hamilton's lines were then?

A No sir.

Q State whether or not that was the reason you did not locate at that time.

(Mr. Roth objects account leading and suggestive. Objection sustained)

Q Will you state at this time why it was you didn't stake or try to make location after your discovery of September 10, 1919?

(Mr. Roth makes same objection which is over-ruled. Takes exception and exception allowed.)

Q State why it was you didn't locate the claim

immediately as soon as your discovery of September 10, 1919.

A The reason I didn't was that I didn't know where Hamilton's lines were.

Q What difference would that make?

A I didn't want to go and locate his ground, and went to look for his stakes—for this stake. (pointing to map)

Q You are pointing to stake No. 1?

A Yes.

Q And there was no writing on it?

A It was a squared stake but no writing.

Q What else did you do?

A Went along up to the other one.

Q What else did you do?

A Didn't do anything—went home.

Q That was in September?

A Yes.

Q What did you do, if anything, in an effort to find out where Hamilton's location was?

A Nothing then—he was in Fairbanks then.

Q Hamilton was in Fairbanks in September 1919?

A Yes sir.

Q You were in Kantishna?

A Yes sir.

Q What did you do, if anything, regarding it when Hamilton came in—into Kantishna?

A I went over to him and asked him to come and show me the lines of the Horseshoe placer claim, and he said he would.

Q Did he?

A Yes sir.

Q What time was it?

A In the afternoon.

Q What date—about?

A The 19th of April.

Q What year?

A 1920.

Q The same date you located it?

A Yes sir.

Q Was that the first time you had seen Hamilton to talk to him after September 10, 1919?

A I didn't see him September 10th.

Q But between September 10, 1919 and April 19, 1920, had you seen Hamilton to talk to him?

A No.

Q As I understand, the first time you saw Hamilton and talked with him to ascertain where the boundaries were and he went and showed you, and then you went and located alongside of him. Is that true?

A Yes sir.

Q You may state whether or not you could see the different corner stakes you have described when standing at initial stake.

A Yes sir.

Q How many stakes could you see standing at initial stake?

A Three, besides the initial stake.

Q Standing at stake No. 2, how many stakes could you see from there besides No. 2?

A The other three.

Q How was it standing at stake No. 3—what could you see in the way of stakes?

A Could see No. 1 and No. 2 plain, and No. 4 you had to stretch up pretty well to see.

Q Standing at stake No. 4, how many could you see?

A Could see them all.

Q All the stakes you put there at the time of location was the four corners you describe. Is that true?

A Yes sir.

Q Describe to the jury why it was you could see from these various stakes—was it on account of cutting out of line, or on account of absence of timber or brush?

A It was open country.

Q There was no timber there?

A No sir.

Q No brush to interfere with the view?

A No brush.

Q About when did you do the first work on the ground?

A You mean outside of making discovery?

Q I mean after location.

A It was November 3rd.

Q What year?

A 1921.

Q 1921?

A Yes, 1921.

Q What work was that—who did the work, do you know who did the work?

A Yes sir,—O. M. Grant.

Q Do you know O. M. Grant's signature?

A I don't know.

Q You wouldn't know his signature?

A Have seen it several times, I think I would.

Q There is a certified copy of some records—just examine. (Hands him paper) Mr. Grant, I want you to examine that to refresh your memory and state whether it was 1921, or was it 1920? Didn't Mr. O. M. Grant do that work in 1920?

A Yes sir.

Q The same year you located the claim?

A Yes sir.

Q Did you tell him where to go to do the work?

A Yes sir.

Q What did you tell him?

A I showed him where to sink.

Q Did you take him on the ground?

A Yes sir.

Q Did he sink where you told him to?

A Yes.

Q Point out on the map where he did that work to your own knowledge.

A I told him to sink the first hole twenty-five feet below Quigley's line and line up the lead as well as he could and he would stand two chances.

Q Two chances of what?

A Of a place where to strike the lead.

Q Had Quigley made a discovery before that time of a lode claim?

A Yes sir.

Q State whether or not Quigley's discovery shaft is approximately where indicated on the map. Do you know?

A That's the correct location.

Q Had Quigley, so far as you know, made any other discovery than the one indicated on his discovery shaft?

A He had several holes—I don't know whether—
(interrupted)

Q So far as you know he had no other than the discovery made above your claim. Is that right?

A No, that is right.

Q Had Mr. Quigley started to run his tunnel—you know where the mouth of Quigley's tunnel is?

A Yes sir.

Q Had he started to run that tunnel before O. M. Grant went there to do assessment work on your claim?

A I don't remember—tunnel was set—was started before—

Q Before O. M. Grant went to do assessment work?

A I think so.

Q Do you know whether or not Quigley had gone down any considerable depth in the tunnel?

A I don't know—I was in the tunnel, but I don't know.

Q Counting the holes as indicated on the map, you will see ten holes.

A Yes sir.

Q Have you seen ten holes on the ground?

A Yes sir.

Q Do you know who put the holes there?

A I know who put nine of them there.

Q Who put nine of them there?

A O. M. Grant.

Q Was that in November 1920?

A Yes.

Q Did you pay O. M. Grant for doing that work?

A Yes sir.

Q How much did you pay him?

A \$100.00.

Q About how deep were the holes?

A The first hole was 12 ft. deep.

Q The hole you refer to as the first hole—state whether that is the hole that is marked on the map as the Campbell and Tobin shaft?

A Yes sir.

Q There is a hole immediately to the right of this first hole, or the Campbell and Tobin shaft. Did you or O. M. Grant sink that hole?

A No sir.

Q Do you know who did?

A No, I didn't see anybody sink it.

Q Do you know when—about when that hole was sunk?

A I don't know the date.

Q I am not talking about the hour or exact date.

A It was between the time we left the first of March and the 20th of June.

Q What year?

A 1921.

Q Were you on the ground about the first of March 1921?

A Yes sir.

Q Was the hole there then?

A No sir.

Q Were you on the ground in June or the first

of July 1921?

A I was on the ground between the 25th of June and the 1st of July.

Q Was the hole there then?

A Yes sir.

Q Did you sink it?

A No sir.

Q Did any one sink it on your behalf or at your request?

A No sir

Q What was the appearance of that hole when you discovered it on your ground in June or July 1921?

A It was a fairly fresh dug hole.

Q How deep was it?

A Between five and six feet deep.

Q About how far was it to the right or to the eastward of your hole No. 1 there that is indicated on the map as Campbell and Tobin's hole?

A 12 ft. to 14 ft.

Q Do you know where the Campbell and Tobin hole is as indicated on the map? Is it the identical hole you say was the first hole sunk 12 ft. deep by Mr. O. M. Grant?

A Yes sir.

Q Did you ever see Campbell or Tobin down in that hole, or see them coming out?

A Yes sir.

Q When was that?

A Between the 25th of June and the first of July.

Q Did you see Campbell or Tobin have any windlass at that hole?

A Yes sir.

Q Did you see them excavating or raising any material from the hole?

A Yes sir.

Q What was the character of the material they raised that you saw?

A It looked like ledge matter.

Q Did it look like ore?

A No, not what I saw.

Q Did it look like float?

A Well, it looked like ledge matter—what would be alongside of ledge.

Q From part of the quartz rock outside of the vein?

A It was partly vein matter.

Q What time was it about when you saw Campbell and Tobin raising this material with a windlass out of that hole?

A What time was it?

Q Yes, what month or day of the month?

A Along between the 25th of June and the 1st of July.

Q 25th of June?

A Yes.

Q Then it was after they had made location on the ground?

A Yes sir.

Q Now, had Mr. Quigley made his location of what he calls the Red Top Lode Claim before Campbell and Tobin came there? Before they came on the ground?

A Yes.

Q Before Campbell and Tobin came on the ground, Mr. Quigley had located his claim?

A Yes sir.

Q How long before?

A Nearly a year.

Q Do you remember the time that Mr. Quigley built his residence as indicated on that map "The Quigley House"?

A Yes sir.

Q Do you remember the time he was excavating for the foundation?

A Yes sir.

Q The Quigley house is designated on the map as Quigley's residence. Do you see it? (Indicating the map)

A Yes sir.

Q Near Post No. 5 of the end line?

A Yes sir.

Q Is that about the true location of Quigley's residence?

A Yes sir.

Q With reference to Quigley's house—there to the right of that is "cache". Whose cache is that?

A Quigley's.

Q And to the right of the cache is marked "bunkhouse". Whose bunkhouse is that?

A Quigley's.

Q And near the Quigley tunnel—the mouth of the tunnel—is a house marked "blacksmith shop". Whose is it?

A Mr. Quigley's.

Q Of all those buildings, which was put there first?

A I don't know—either Quigley's house or the the blacksmith shop.

Q He put the house up before the cache?

A Yes sir.

Q And before building the bunkhouse?

A Yes sir.

Q So far as the three buildings below your line, as indicated, are concerned, Quigley built his house first?

A Yes sir.

Q Did you have any conversation with Mr. Quigley in regard to the location of that house?

A No sir.

Q Did you have any conversation in regard to the location of his excavation?

A Yes sir.

Q Describe to the jury about when it was, and where it was and just what was said and all that occurred between you and Mr. Quigley.

(Mr. Roth makes objection account irrelevant, incompetent and immaterial, but later withdraws objection.)

Q Go ahead and state what occurred between you and Quigley with reference to establishing that line.

A I came along—Mr. Quigley was excavating and I said, "Joe, you will soon have enough done for assessment." He says, "This is not on your placer." I says, "Oh, I thought it was." "No" he says "this is not on your placer." That was all

there was to it at that time.

Q Quigley didn't say whether the house he proposed to build—or he was just excavating?

A Yes sir.

Q Did he soon after build a house where he was excavating?

A Yes sir.

Q Did Quigley tell you he had measured from your initial stake up?

(Mr. Roth makes objection to question, but Court rules that witness may state what Mr. Quigley told him.)

A No sir.

Q You say up to that you hadn't measured that line?

A No sir.

Q But he informed you that where he proposed to build his house was outside the boundaries of your placer claim?

A Yes sir.

Q Then afterwards did Mr. Quigley put on these other two buildings indicated below the line there—the cache and bunkhouse?

A Yes.

Q When Mr. Quigley told you that the excavating he was putting in there was not on your placer claim, did you believe that statement?

(Mr. Roth objects as irrelevant, incompetent and immaterial, but Court rules that he may state facts.)

A I took Quigley's word for it—I knew the claim was too large.

Q You knew it was more than 20 acres?

A Yes—that corner stake was higher than it should have been on account of no place to put it.

Q You stated on the location notice that you claimed 1320 ft. long and 660 ft. wide?

(Mr. Roth makes objection on account of the fact already proven. Objection sustained.)

Q Was Quigley present at any time at your initial stake?

A Yes sir.

Q He was there when you staked it?

A Yes.

Q Did you ever have any controversy or argument with Quigley in regard to the width of the quartz location?

A No.

Q About the time or soon after the discovery of Mr. Quigley, did he or not establish the lower end line of Quigley's Red Top Quartz Claim?

A Yes sir.

Q Did you see stakes there that he placed defining the lower end line of the quartz claim?

A Yes sir.

Q And they are substantially located as indicated on the map?

A Yes sir.

Q You say that at the time Grant—O. M. Grant—went to do assessment work, Quigley's discovery shaft was down and location of Quigley's claim had been made. Is that true?

A Yes sir.

Q And his lower end line has been established?

A Yes sir.

Q And you don't know whether his tunnel had been started or not, but if not, there were some holes near there?

A Yes, I think the tunnel was started, but wouldn't swear to it.

Q And you went there to show Mr. Grant—O. M. Grant—where to start your first hole which you say is the same as the Campbell and Tobin hole—that was about how far below the lower line of Quigley's claim?

A 25 ft. below his center stake.

Q And what did you say in regard to the lining up from Quigley's discovery?

A I told O. M. Grant when he was doing the assessment for placer, he might as well line up with Quigley and he might strike the lead there.

Q Was there any known lead within the boundaries of your placer claim at that time?

A None at all.

Q Was there ever any known lead within the boundaries of your placer claim before or at the time that Campbell and Tobin went upon the ground?

A No sir.

Q Was there ever any known lead within the boundaries of your placer claim before Campbell and Tobin struck a lead in your hole here which is indicated as Campbell and Tobin shaft?

A No sir.

Q Your hole No. 1 which is the same as the Campbell and Tobin hole was down 12 ft. from the

surface?

A Yes sir.

Q Sunk by O. M. Grant?

A Yes sir.

Q After O. M. Grant got through sinking the hole 12 ft., did anybody else sink it any lower, excepting Campbell and Tobin.

A No sir.

Q Were you down at the bottom of the hole?

A Yes sir.

Q Could you—state whether or not that hole at the depth you sunk it, or at any time prior to Campbell and Tobin going there, did it or did it not disclose any vein or lode?

A At forty feet.

Q I am not talking about forty feet. You said you only run it down 12 ft.

A Yes sir.

Q You stated nobody sunk from the bottom of the hole except Campbell and Tobin?

A Yes sir.

Q I am asking whether or not the bottom of that hole, or any place in that hole so far as you sunk the 12 ft.,—did it or did it not disclose any vein or indication of a vein or lode?

A You mean 12 ft. down?

Q Yes.

A No.

Q Before Campbell went there?

A No.

Q Did it disclose any float that you know of below the surface?

A No sir.

Q You say that nine of these holes out of the ten were sunk by O. M. Grant for you?

A Yes sir.

Q Were they located about the same as they are located on the map?

A Yes sir. That is a good map.

Q They are all your holes, excepting the one hole which is immediately to the right of what is indicated as the Campbell and Tobin hole?

A Yes sir.

Q They are marked at various depths—some of them 8 ft., 6 ft. and 7 ft. and 10 ft. Are you able to state whether or not that is approximately correct—the depths of them?

A Yes sir.

Q When you started hole No. 1, which is indicated on the map as Campbell and Tobin's shaft, why didn't Mr. O. M. Grant continue sinking that shaft or some other shaft instead of sinking so many shafts to a short distance.

(Mr. Roth objects as irrelevant, incompetent and immaterial. Objection sustained. Exception taken and allowed.)

Q Mr. Grant, you stated that you showed O. M. Grant where you wanted him to sink that first hole?

A Yes sir.

Q And made a statement that you tried to line up what might be an extension of Quigley's lode?

A Yes sir.

Q You didn't know how deep the ground was

to bedrock?

A No sir.

Q Did you instruct Mr. O. M. Grant how far you wanted him to go down?

(Mr. Roth makes objection and is sustained. Exception taken and allowed.)

Q You stated you wanted to line up—that among other things you wanted to do the assessment work and have a possibility of striking a vein. Now why didn't you go deeper than 12 ft.?

(Mr. Roth makes objection on the ground of being irrelevant, incompetent and immaterial. Objection over-ruled. Exception taken and allowed.)

A I couldn't get any one to go on the windlass to put it down.

Q You mean you couldn't hire any one to help Mr. Grant with a windlass at that particular time?

A No sir.

Q State whether or not 12 ft. is about as far as a man can throw out of a hole without a windlass.

A It is, yes.

Q I believe you stated you paid O. M. Grant \$100.00?

A Yes sir.

Q As a mining man, state to the jury whether or not the work that Mr. O. M. Grant did there in November 1920 was reasonably worth \$100.00 in view of the market conditions of labor in that particular vicinity.

(Mr. Roth objects as irrelevant, incompetent and immaterial. Objection sustained. Exception taken and allowed.)

Q What was the reasonable value of the work that O. M. Grant did for you in November 1920 on this placer ground?

A Between \$125.00 and \$150.00.

Q But it only cost you \$100.00?

A He worked hard and long hours.

Q Do you know how many days it took, of your own knowledge?

A He worked 12½ days.

Q You know that of your own knowledge? Were you there all the time?

A No, that is what I paid him for.

Q How much did you pay him a day?

A \$8.00.

Q Did he board himself?

A Yes sir.

Q Did Mr. O. M. Grant—did you have any arrangement with—O. M. Grant whereby Mr. O. M. Grant was to have any interest or benefits of any nature in the event he should strike a lode claim?

A None whatever.

Q At that time was there any one besides yourself that had any interest of any nature whatsoever in this placer claim besides yourself?

A No sir—no one up until the time suit was filed.

Q Well, did any one have any interest in that placer at the time suit was filed except yourself?

A No sir.

Q Does any one own an interest in the placer claim at this time?

A Yes, my attorney if I win the case.

Q Leave out your attorney—does any one own any interest?

A No sir.

Q All the interest your attorney has is a contingent interest, is it not?

A Yes sir.

Q And if you lose the case, your attorney wouldn't want it. Campbell and Tobin entered upon that ground about what time, as near as you can ascertain?

A Some time between the 25th and 30th of May.

Q What year?

A 1921.

Q Where were you at the time Campbell and Tobin entered upon that ground?

A Roosevelt.

Q Where is that—how far from this property?

A Thirty miles.

Q Is Roosevelt the place they call "The Landing"?

A Yes sir.

Q That is where boats land coming up the Kantishna River?

A Yes sir.

Q Did you at any time give Mr. Tobin any permission to enter upon your placer claim for any purpose?

A No sir.

Q Did you at any time give Mr. Campbell per-

mission to enter upon that claim for any purpose whatever?

A No sir.

Q When they entered upon the ground, whatever date it might be, did you know it at the time they entered?

A No. sir.

Q You say you were at Roosevelt at the time they did it?

A Yes sir.

Q A short time prior to that, was Mr. Campbell up at the Landing—up at Roosevelt at the time you were there?

A Yes sir.

Q You were there together, you and Campbell?

A Yes.

Q Did you have any horses there at the time?

A Yes.

Q State whether or not Campbell—you loaned some horses to Campbell.

A Yes, I loaned him a team to haul himself some logs.

Q Some logs?

A Yes, from Moose Creek to Friday Creek.

Q Where were your horses?

A At Roosevelt.

Q Horses were at Roosevelt?

A Yes sir.

Q And did he take the horses at Roosevelt—

A Yes sir.

Q —and go down in the vicinity of this property on Moose Creek—

A Yes sir.

Q —to haul the logs? Did he bring the horses back to you?

A Yes sir.

Q About how long did he have the horses?

A I believe it was twenty-one days.

Q Did you charge Campbell anything for the use of the horses?

A No sir.

Q He just borrowed them?

A Yes sir.

Q He and you were friends?

A Yes sir.

Q Up until that time had you had any difficulty with him or he with you?

A No.

Q How about Tobin?

A No trouble with him, no sir.

Q After Campbell brought the horses back to you at Roosevelt, what did Campbell then do? How long did Campbell stay there?

A A few hours.

Q Did he tell you where he was going?

A Yes.

Q Where did he say he was going?

A Back up.

Q Where was Campbell living at that time, if you know?

A I don't know.

Q Had you ever seen him around the vicinity of this placer claim of yours before that time?

A Yes, he lives 300 or 400 ft. below.

Q You mean at that time he lived there—in May or June of last year—did Campbell live there, if you know?

A Yes, he was living there in June—lived down here on Hamilton's bench.

Q On Hamilton's bench?

A Yes sir.

Q About how far from your lower side line?

A Between 300 and 400 ft. I should judge.

Q What was he living in—a house or tent?

A A tent.

Q Do you know who was living with him?

A Yes sir.

Q Who?

A Mr. Tobin.

Q They were living together?

A Yes.

Q That was before they entered on your ground?

A No, after. After I got back I saw them living there.

Q Before that, do you know where Campbell lived?

A No, I don't.

Q Do you know where Tobin lived?

A No, I don't.

Q Had you ever seen Campbell within the boundaries of your bench claim before Campbell and Tobin entered upon your ground for the purpose of making a discovery?

A I didn't see him, but there was a road went through there and Campbell was driving a team.

Q Driving a team? Who for?

A He was driving Aitken's team.

Q And where was Aitken working?

A He worked two miles on the hill above.

Q What was Campbell driving team for Aitken for?

A He hauled some meat, and hauled some wood.

Q Did Campbell have a contract to furnish wood to Aitken?

A Yes sir.

Q And in hauling, did the road pass over this placer claim of yours?

A Right through the center.

Q And Campbell had to go—had to travel up and down that road in order to get up the hill? That is true?

A Yes sir.

Q There was no other road within a reasonable distance?

A No sir.

Q Did Campbell ever work for Quigley that you know of before he located on your ground?

A I don't know.

Q Did Tobin?

A Yes, I seen Tobin working for Quigley.

Q Did you ever see Tobin within the boundaries of your placer claim?

A Only passing through.

Q Did he pass through the placer ground coming up to Quigley's house?

A Yes sir.

Q Did the road or trail lead that way?

A Yes sir.

Q After Mr. Campbell brought the horses back to Roosevelt and delivered them to you, you say he only stayed a few hours and came back down to this property and vicinity?

A Yes sir.

Q Did you have a talk with Mr. Campbell before he left?

A Yes sir.

Q Tell us as near as you can what date it was you had that talk with Campbell.

A As near as I can remember it was along between the 25th and 31st of May—it might have been earlier than that—between the 20th and 30th of May.

Q That was 1921?

A Yes.

Q That was Mr. Campbell here—the defendant?

A Yes sir. I invited him to stay all night, and he said no he was in a hurry to get back, so Mr. Walter Scott was living with me and got him a lunch.

Q Got Mr. Campbell a lunch to take with him on the road?

A Yes sir.

Q What did you say to Campbell with reference to your placer claim?

A I told him I would be up in a short time as soon as could get through to do some work on the ground.

Q On what ground?

A On the placer location.

Q What did he say?

A He didn't say anything.

Q Did you tell him what time you expected to get through with your work?

A No.

Q What were you doing at Roosevelt?

A Re-sacking ore and getting it ready for shipment.

Q You were working for Aitken?

A Yes sir.

Q Did Campbell see what you were doing?

A Yes sir.

Q He saw what you were doing?

A Yes.

Q You told him when you got through you were coming down there to do some work on your land?

A Yes sir.

Q State whether or not if at that time before you left Roosevelt that some one gave you some information in regard to Campbell and Tobin.

A Yes sir.

Q State whether or not you were informed that the defendants Campbell and Tobin had entered on your placer ground and made an attempt at locating a quartz claim.

A Yes sir.

Q When you received that information, what did you do?

A I couldn't do anything—I had to stay with the ore.

Q You had to finish sacking the ore?

A Yes.

Q What did you do with reference to your claim?

A I came on up to the claim.

Q As soon as you got through sacking ore? How many days after you received the information?

A It was some time after—the 25th of June.

Q When you got down to the placer claim?

A It was about that time.

Q Describe what conditions you found when you got down there.

A I found Mr. Campbell and Tobin working there.

Q Where were they working?

A Working on this shaft—this 12 ft. hole.

Q They were working at shaft indicated on the map as Campbell and Tobin shaft?

A Yes sir.

Q The same one you described as being hole No. 1 of O. M. Grant's?

A Yes sir.

Q What did you do, if anything, when you found them working there?

A I went up to Eureka and had Mr. Wilson type-write two notices.

Q Mr. Wilson was Commissioner and Recorder at Eureka?

A Yes sir.

Q How far is Eureka from this Mining Claim?

A Between 1½ and 2 miles.

Q Did you get some notices?

A Yes sir.

Q What was the nature of them?

A Trespass notices.

Q State in a general way what the contents were.

A I believe it said, "Notice is hereby given that I, Wm. Grant, am owner of this property, legal owner of this property. Trespassers will be prosecuted." Something to that effect.

Q What did you do with the two notices?

A I posted them.

Q Where?

A On the claim—posted one close to this shaft

Q Which shaft?

A This Campbell and Tobin shaft—and the other one off to one side.

Q How far?

A Twenty or twenty-five feet.

Q What did you post notices on? Were they on a board?

A Yes, I nailed them on boards.

Q And where was the board put?

A Nailed it on an upright.

Q And notice was nailed on the board?

A And driven in the ground.

Q About what time did you first put notices up?

A The day after I come up—can't tell the date.

Q Was it the latter part of June 1921?

A Yes.

Q Was Campbell and Tobin either one there at the time you put up notices?

A No sir.

Q Where were they?

A I believe they were down at Moose Creek

cutting logs.

Q What time of the day did you put them up first?

A Put them up in the evening.

Q State what happened to the notices, if you know.

A The next morning I was going back to Roosevelt with the mail—brought it up this trip—I was going back with the mail and three quarters of a mile from the claim on the road—was going along the road and came to a tree cut and laying across the road and notice put on it.

Q How big a tree was it?

A Oh, a cottonwood eight or ten inches through.

Q And one of the notices you had posted on your claim was posted on this tree?

A Yes sir.

Q Did you recognize that as being one of your notices?

A Yes sir.

Q Was there anything else on there?

A No sir.

Q I forgot to ask you to state whether or not you signed your name to the notices?

A Yes sir.

Q State whether or not it became necessary for you to get out and remove the tree in order to get along the road?

(Mr. Roth objects to question and objection is sustained.)

Q What became of the other notice?

A It was laying on the ground.

Q That next morning?

A Yes sir.

Q Were boards or sticks to which notices were fastened—were they in place?

A No sir, they had been taken away.

Q You have no knowledge who did it?

A No sir.

(Mr. Roth makes a motion to strike out testimony with reference to notices being down. Court denies motion.)

Q When you found this tree across the road, do I understand you were then on your way with the mail back to Roosevelt?

A Yes sir.

Q What did you do then?

A George Moody removed the tree and we went on to Roosevelt.

Q What else did you do regarding notices on this claim?

A I didn't do anything until I came back.

Q How long was that?

A Some time in July.

Q In July?

A Yes sir.

Q What, if anything, did you do in reference to the notices?

A I went up and built a tent to live in.

Q Up where?

A On the claim.

Q You built a tent?

A Yes sir.

Q Whereabouts did you put the tent?

A A few feet above the cabin.

Q Go ahead—you pitched your tent, and what else?

A Got ready to go to work and went out again—I still kept the notice and brought it back—put into a box this time—nailed it into a box and nailed the box on to a stake, a six inch stake—the stake stuck up above the box and knocked it down in the ground.

Q And was the notice in the box so that anybody could see it?

A Yes, it was a big box.

Q Did you nail it on the stake—the box containing the notice?

A Yes sir.

Q What happened, if anything? Tell the jury.

A I was out with a small axe driving it in—driving the stake in the ground—and I noticed a rock come past me. I looked up and another one come. I dodged it. The third came and struck me in the small of the back.

Q Who threw the rocks?

A Mr. Campbell.

Q Did you see him?

A Yes sir.

Q The two rocks thrown first that didn't hit you, did they come any where near you?

A They came close to my head—a little too high.

Q And the third rock that Campbell threw hit you in the back?

A Yes sir. I turned around to get away and it got me in the small of the back.

Q How big was it?

A About the size of your fist.

Q How far away was Campbell when he threw it?

A Twenty-five or thirty feet.

Q Which way was Campbell with reference to your tent—were you between the tent and Campbell?

A Between the tent and this hole, yes.

Q Where was Campbell?

A He was on the dump.

Q Was he on the dump near—you mean the dump surrounding the Campbell and Tobin hole?

A Yes.

Q What effect did it have on you when you were hit in the back with a rock as big as your fist? Did it paralyze you and knock you down?

A Yes sir.

Q Down flat on the ground?

A Yes sir.

Q What happened then?

A Roger came out—he was in the tent.

Q Roger Parenteau was then at your tent?

A Yes.

Q What did he do.

A He come up and asked me if I was hit. I told him I was.

Q You were still down?

A Yes sir.

Q What did Roger do, if anything?

A He took hold of my arm and helped me up.

Q Took hold of your arm and helped you up?

A Yes.

Q What did Campbell do in the meantime while Roger was helping you up?

A Campbell was coming towards us.

Q Did Campbell throw any more rocks after you got up?

A Yes, one or two more.

Q Did they come any wheres close to you?

A Yes sir.

Q Did they come any wheres close to Roger?

A Yes sir.

Q Do you know about the size of the rocks?

A I couldn't tell—they went past us.

Q What did you do then?

A Campbell came towards us and we went in the tent.

Q Did you hurry?

A Went as fast as we could.

Q Did Campbell come into the tent?

A No sir.

Q Did he come down towards the tent?

A No, I think he stopped.

Q But he ran after you until you ran in the tent?

A Yes sir.

(Mr. Roth makes objection and the Court orders answer stricken out.)

Q You said you went to the tent as fast as you could?

A Yes sir.

Q What did Campbell do, if anything?

A I didn't see what he did when we went into the tent.

Q You did say when Roger helped you up that Campbell was then coming towards you?

A Yes sir.

Q That you run to the tent as fast as you could?

A Yes sir.

Q Do you know how far—about, that Campbell followed you?

A No, my back was turned.

Q Was there any one else present besides you and Campbell and Roger Parenteau?

A Yes sir—not present, but there was a bunch in front of Quigley's house. I don't know who they were.

Q About how far would it be from Quigley's house down to where you were?

A Close to 300 ft.

Q Did Campbell say anything during this trouble?

A I didn't hear him say anything.

Q You didn't hear him say anything?

A No.

Q Did you say anything to Campbell?

A I never spoke to him since he left the Landing.

Q Did Roger Parenteau say anything to Campbell that you know about?

A Yes sir, I heard him say something, but didn't know what it was.

Q After Campbell knocked you down?

A Just when I was getting up, yes.

Q Where was Tobin?

A He was in the hole.

Q In the Campbell and Tobin hole?

A Yes.

Q Do you know where Campbell went after he went back, when he started after you, where did he go after that?

A When I came out of the tent he was going towards the dump.

Q Campbell and Tobin shaft?

A Yes. I went down towards Moose Creek and up to Eureka.

Q You saw him?

A Yes sir.

Q You come out of the tent and went down to Eureka?

A Yes sir.

Q Did you and Campbell have any more trouble after that—I mean any fights or difficulties?

A No sir.

Q Did you see when Tobin come out of the hole?

A No sir.

Q You had left and gone down to Eureka without seeing Tobin come out of the hole?

A Yes sir.

Q Did Campbell and Tobin have a windlass across that hole at that time?

A Yes sir.

Q Can you tell about what date this was?

A The 25th day of July.

Q 1921?

A In the morning, yes sir.

Q You may state whether or not you swore out a warrant for Mr. Campbell's arrest that day.

(Mr. Roth makes objection as irrelevant, incompetent and immaterial. Objection sustained. Exception taken and allowed.)

Q You may state whether or not you at that time or any time prior to that day examined the ore or rock or the material that Campbell and Tobin had taken from their hole or discovery shaft.

A Yes sir.

Q State what the character of the substance was—what it looked like.

A There was some galena there—some of it looked as if it might carry gold without galena—some galena—quite a bit of ledge matter.

Q Did you have any of it assayed?

A Yes sir.

Q Have you the returns of the assay?

A No sir.

Q However, you got returns from it?

A Yes sir.

Q You may state independently of those returns, as a quartz miner, what further observations you made of the material that came out of the hole—what the material that came out of the hole looked like.

A It looked like ledge.

Q Ledge matter?

A Yes sir.

Q Could you tell whether or not it come from a ledge or whether or not it might be float?

A It wasn't float—there was no float there. It was shot out of a ledge.

Q Then as a mining man, state whether or not the rock that Campbell and Tobin took out of that hole was or was not what is known as rock in place.

MR. ROTH: We admit that the rock that Campbell and Tobin took from the bottom of the hole at the depth of about 40 ft. was ore which came from a ledge in place and carried value sufficient upon which to base a discovery of a lode—sufficient to warrant a person to proceed to work it.

BY MR. STEVENS: (To Mr. Grant)

Q After seeing and determining that this rock was ore or vein matter or ledge matter in place, what, if anything did you do in the way making any location upon that ledge?

A I located a quartz claim.

Q And state whether or not you put up any discovery stake.

A Yes sir.

Q About where?

A Near the hole.

Q Near the hole of Campbell and Tobin?

A Yes.

Q And state whether or not you at that time posted—put up any notice of location—notice of discovery?

A Yes sir.

Q Did you write that on the stake—the discovery stake—or did you put it up in the way of a notice on paper?

A I wrote it on the post.

Q Tell the jury what you wrote on the post at that time.

A I haven't the location certificate with me—I can't remember what all I put on it.

Q Was the notice on the location stake the same as your location certificate?

A Yes sir.

Q To refresh your memory then—(Interrupted)

A I chained 1500 ft. down hill in a westerly direction.

Q Examine that please (hands him paper) and state whether or not that is your signature.

A Yes sir, that is my signature.

Q State what that paper is that I hand you. Is that your location certificate?

A Yes sir.

Q Did you have that recorded?

A Yes sir.

Q Since you have read that, can you state now what it was you put on your discovery stake?

A Yes sir.

Q Just state what you put on the discovery stake.

A (Reads) "That the undersigned a citizen of the United States, having discovered at the place where this notice is posted on this the 25th day of July 1921, a vein or lode of quartz or other rock in

place bearing gold and other valuable mineral deposits does hereby locate and claim the same as the notice on initial post Lode Mining Claim. The general course of the vein or lode as far as the same can now be ascertained is westerly and the undersigned hereby locates and claims the same 1500 feet in length and 50 feet in width in a westerly direction from the point of discovery, where this notice is posted, "and a total width of 50 feet, the same being 25 feet on each side of the center of said vein. Notice dated and posted this 25th day of July 1921. This claim is known as the Hillside Quartz Claim. Wm. Grant, Locator." I didn't write it and it is hard to read.

Q You wrote the signature?

A Yes sir.

Q That is made out on regular form of blank?

A Yes sir.

Q Please give the date.

A 25th day of July.

Q 1921?

A Yes sir.

Q After posting that notice, or copy of that notice on the discovery stake as you have indicated, what else did you do with reference to perfecting your location?

A I put two corner posts there 25 ft. on each side of the center post.

Q You mean the center post, or discovery post?

A The center post and discovery are different—the discovery post is a few feet above the hole, and other one is—(Interrupted)

Q Your discovery post was near Campbell and Tobin's hole and there is where you put your notice? Is that right?

A Yes sir.

Q And north or northeasterly of that you put another post which would be the center end post. Is that it?

A Yes, I put three posts there—the center post and two corners, right below Quigley's line, and corners each side of it.

Q You put three posts up at your upper end line besides your discovery post?

A Yes sir.

Q You spoke about one post being the center end post. How far on either side did you put your corner posts—how far from the center post?

A 25 ft.

Q That would mean your claim was 50 ft. wide?

A Yes sir.

Q Did you measure them or calculate the distance down hill?

A I stepped it.

Q How far down hill did you go?

A 1450 ft. as near as I could by stepping, I figured I was going down hill and taking long steps.

Q You claimed 1500 ft.?

A Yes.

Q You went down hill, and then what did you do?

A Put in a center stake.

Q Did you write anything on the center stake?

A Yes sir.

Q What did you write?

A Practically the same as on here (indicating notice of location)

Q You mean the same as in the location notice on the discovery stake?

A Yes sir.

Q Did you put your own name there as locator?

A Yes sir.

Q Date of location?

A Yes sir.

Q Name of location

A Yes sir.

Q What name?

A The Hillside Lode Claim.

Q From the center stake at the lower end, did you put any other stakes?

A Yes, two corners.

Q How far did you put the corner posts from the center?

A 25 ft. each side.

Q Did you put anything on the corner posts?

A Yes sir.

Q What did you put on the corner posts?

A I put on "northeast" and "southwest".

Q Talking about these lower end line stakes. What, if anything, did you put on the southwesterly corner stake?

A I put "southwesterly corner of the Hillside Lode Claim, staked July 25, 1921, Wm. Grant, Locator."

Q Is that all you put on?

A I believe so.

Q Did you put any arrows on?

A Yes sir.

Q Tell about the arrows—which way did they point?

A They were pointing up hill towards the upper end line.

Q But there was just one arrow pointing up hill, wasn't there?

A Yes, the other was looking towards the corner.

Q Towards the other lower corner?

A Yes.

Q Tell the jury, what, if anything, you put on the southeasterly corner of that claim.

A The same as I put on the other, only southeast.

Q Southeast instead of southwest?

A Yes.

Q Otherwise it was the same?

A Yes.

Q What kind of posts were those two corner posts? Describe them. How big, how tall—what were they?

A They were all over three feet high.

Q About how thick?

A They averaged from three inches up to five inches. The center stake is a big stake.

Q Were any of them less than three inches in diameter?

A No sir.

Q Did you put anything on the center—the lower center stake?

A Yes sir, I put on "Lower center stake of the Hillside Lode Claim, staked July 25, 1921, claiming 1500 ft. in an easterly direction to upper center post" and my name.

Q As I understand it, that would be north easterly?

A Yes, northeasterly.

Q Is that all you put on?

A I think so.

Q From those lower corner stakes could you look up and see the upper end stakes of your claim?

A Yes sir.

Q Did you see them?

A Yes sir.

Q From both of those stakes down below?

A Yes sir.

Q Going back to the upper end stakes. You stated what you put on the discovery shaft—I mean the discovery stake near the shaft of Campbell and Tobin. What, if anything, did you put on the upper center stake?

A I put on a good lot—practically what is on there (indicating notice of location)

Q What is on there you put on discovery shaft?

A That was on the discovery stake—just said discovery stake, date of discovery, and date of location. That was on the center stake that there.

Q What, if anything, did you put on the discovery stake?

A Gold discovered—a ledge discovered in place—something to that effect, 25th day of July 1921.

Q Did you put your name?

A My name and date, yes.

Q Name of the claim?

A Yes.

Q A few feet northeast, up towards Quigley's claim. you put in a center, which would be the upper center end stake. You put on a copy of this description, the same as the certificate of location?

A Yes.

Q You have already described the other two stakes, the corner stakes in the upper corners. What, if anything, did you write on those stakes?

A Date of location, name of claim, the corners, and name as locator.

Q How did you designate the corners—the one which would be the northwesterly corner, what did you call it?

A Called it the northwesterly corner.

Q You wrote it on the stake?

A Yes.

Q The northeasterly corner, what did you put on it?

A Northeasterly corner.

Q What were the sizes of those two upper corner stakes—about?

A Four feet high and five or six inches square.

Q Were they squared?

A Yes.

Q All six stakes were squared?

A Yes sir.

Q From the discovery hole there or stake, when you came down hill approximately 1500 feet, what direction did you go? I mean with reference to the Quigley location had it extended in a straight line. How did you come down?

A I come down in a southwesterly direction.

Q Did your lines so far as you were able to do so did your lines run the same as if a continuance of the strike of the lode as Quigley had located it?

A Yes sir.

Q Would they run in line—extended the same as if you sited from Quigley's discovery down to Campbell and Tobin's discovery—a straight line extended from that—about?

A Yes.

Q When you came down hill to go 1500 ft. or thereabouts, did you go further south or southwest than Campbell and Tobin's location, or attempted location, or did you see their lines?

A I didn't see the line.

Q At the lower end?

A I didn't see the corner post at the lower end—one of the corner posts was out in the brush.

Q That is in the lower corner?

A In the lower corner.

Q As I understand you based your discovery of that lode—you based your location of that lode on the discovery which was made by Campbell and Tobin?

A Yes, on a 'known lode.'

Q You regarded it as a known lode after Campbell and Tobin had opened it up?

A Yes.

Q Prior to that time it was not known?

A Yes. No, not a known lode before.

Q As a mining man, state whether or not you know at this time—can you state at this time whether the Campbell and Tobin discovery is the same lode that Quigley located or not?

A No sir, I can not.

Q You don't know?

A No sir.

Q Could anybody tell?

(Mr. Roth makes objection on the ground that it is impossible for him to state whether anybody can tell. Court rules witness can state whether he could tell and that is as far as he can go.)

Q Mr. Grant, is there any means by which a mining man, familiar with veins and lodes and quartz mining, is there any means by which a miner can tell how far down under the surface a vein will go, without exploring it?

A Not without digging, no.

Q Is there any means of determining how far a ledge will run without exploring or digging or prospecting?

A No sir.

Q Is there any presumption indulged in by mining men that a ledge extends at all any distance?

A Not if you don't see it, no.

Q It might be a good chance, that is all?

(Mr. Roth objects to counsel testifying)

Q You have identified this as being the original location certificate?

A Yes sir.

(Mr. Stevens offers location certificate in evidence same being admitted and marked Plaintiff's Exhibit "C")

MR. STEVENS reads Plaintiff's Exhibit "C" to the jury, as follows:

"Notice of Location. Notice is hereby given that the undersigned, a citizen of the United States, having discovered at the place where this notice is posted on this 25th day of July 1921, a vein or lode of quartz or other rock in place bearing gold and other valuable mineral deposits, does hereby locate and claim the same as the notice on initial post Lole Mining Claim. The general course of the vein or lode as far as the same can now be ascertained is westerly and the undersigned hereby locates and claims the same 1500 feet in an length and 50 feet in width in a westerly direction from the point of discovery, where this notice is posted, and a total width of 50 feet, the same being 25 feet on each side of the center of said vein. Notice dated and posted this 25th day of July 1921. This claim is known as the Hillside Quartz Claim. Wm. Grant, Locator."

Endorsement:

"No. 3154. Notice of Location. Filed for record at request of Wm. Grant on the 26th day of July, 1921, at 10 minutes past 9 P. M.

and recorded in Vol. 1 of General, page 211,
Kantishna Recording Precinct.

(SEAL)

C. Herbert Wilson
Recorder.

Session 10:00 A. M. February 3rd, 1922.

WILLIAM GRANT, called as a witness on his
own behalf, heretofore duly sworn testified:

Direct Examination ..Continued)

BY MR. STEVENS:

Q Mr. Grant, in describing the boundaries of
your quartz claim, concerning which you testified
yesterday, state how the end lines of your claim
were marked out.

A They were marked out parallel.

Q The end lines of your quartz claim were
marked parallel to each other?

A Yes sir.

Q State whether or not they run substantially
at right angles with the side lines.

A Yes sir.

Q Before you located the quartz claim, did you
see the boundary lines or location notice posted by
Campbell and Tobin?

A Yes sir.

Q State whether or not your quartz claim so
far as the side lines are concerned lies substantially
within the boundaries of the Campbell and Tobin
quartz claim location.

A They do.

Q Is the upper end line of your quartz claim in
the same vicinity or near the upper end of Camp-
bell and Tobin's quartz claim?

A Yes.

Q You said you didn't examine the stakes at the lower end of Campbell's claim?

A No, I didn't.

Q Did you know at the time you located that the quartz claim of Campbell and Tobin runs, or claims to have run, some 1470 feet down hill and in a westerly or southwesterly direction?

A Yes sir.

Q That is the same direction as you describe your claim?

A Yes sir.

Q State whether or not at the time you located the quartz claim—your quartz claim—covering in part the quartz claim located by Campbell and Tobin, state whether or not that was done by you under advice of your attorney.

(Mr. Roth objects account irrelevant, incompetent and immaterial. Objection sustained. Exception taken and allowed.)

Q State, if you know, how far it is from the location of this ground in dispute in the Kantishna country to any place where there is a law office.

(Mr. Roth objects on the same ground and objection is sustained. Exception taken and allowed.)

Q Did I understand from your testimony yesterday that you stated you based your quartz location upon the discovery made by Campbell and Tobin?

A Yes sir.

Q Why did you do that?

(Mr. Roth objects as irrelevant, incompetent and immaterial. Objection sustained. Exception taken and allowed.)

Q Were you in the vicinity of this property at the time Mr. Quigley made a discovery up the hill above your placer claim?

A Yes sir.

Q State about how far the discovery of Quigley's is above your placer claim, if you know.

(Mr. Roth objects on ground that figures have already been given in testimony. Objection sustained.)

Q Did you know about that time Mr. Quigley made a quartz location and based it upon that discovery?

A Yes, he told me so.

Q Do you know the time or occasion of Mr. Quigley's starting his tunnel?

A No, but pretty near—I wasn't down there when he started.

Q Did you and Quigley have any conversation in regard to where the mouth of Quigley's tunnel was located?

A Yes.

Q What was it?

MR. ROTH: When was this?

MR. STEVENS: The first conversation.

MR. ROTH: The time should be fixed as nearly as we can.

MR. STEVENS: It was after the discovery.

(To Mr. Grant) Do you know when Mr. Quigley did start the mouth of his tunnel—the date?

A No, I don't.

Q What conversation did you have, if any about the location of the mouth of the tunnel?

A Mr. Quigley asked me if I would allow him to dump on the placer ground when he developed the tunnel.

Q Was that after he started the tunnel?

A About the time he started.

Q What did you tell him?

A I told him yes, it couldn't hurt any—he had to run the tunnel and dump some place—it would be allright.

Q He dumped the material he dug out of the tunnel near the mouth?

A Yes sir.

Q Did he say, or you say, as to whether or not the mouth of the tunnel was on your placer ground?

A Not at that time.

Q Was that all that was said at that time?

A Yes sir.

Q Was there any conversation any other time about the location of the mouth of the tunnel?

A Yes.

Q About when and what was said?

A Along the last of September before I came out, I measured—I sited the lower line from corner to corner and made—and measured from there up to Quigley's tunnel.

Q You sited and located the straight line between post No. 1 and post No. 2, and then mea-

sured straight up from that line to the mouth of the tunnel?

A Yes sir.

Q What did you ascertain as regards the location of the mouth of the tunnel?

A I ascertained that the tunnel was outside of the quartz location—outside of the placer location.

Q Did you have any talk with Quigley about it?

A Yes, Mr. Quigley was there. I said, "tunnel is not on the placer," and he says, "No it is off your ground," and he asked me to go in and see the tunnel.

Q How far did you go in?

A To the face of it.

Q About how long was the tunnel?

A 200 ft. at that time.

Q Could you see an exposure of ledge there?

A Yes, in places.

Q How far in from the mouth of the tunnel before you could see any exposure of ledge?

A The last time I was in, the tunnel had been timbered then, but before that I was in several times and it seemed to be 30 ft. to 35 ft. before it showed.

Q At that time was the tunnel timbered?

A No sir.

Q But that was, all of that was within the boundaries of Quigely's quartz location, as heretofore located?

A Yes sir.

Q The defendants in this case, as you have

testified, were in possession of that hole and working it?

A Yes sir.

Q Did ~~they~~ ever give up possession to you?

A No sir.

Q Were ~~they~~ holding possession against you at the time you brought suit?

A Yes sir.

Q Were you damaged by reason of their wrongfully holding possession?

A Yes sir.

Q How much?

A Over \$500.00.

Q \$500.00 is what you ask for as damages in this suit?

A Yes sir.

MR. STEVENS: Take the witness.

Cross Examination

BY MR. ROTH:

Q I understood you to say you were a miner of about forty years experience?

A Yes sir.

Q You say you were born in Scotland?

A Yes sir.

Q When did you leave Scotland?

A In '82.

Q And where did you go?

A Come to New York.

Q Have you remained in the United States, excepting the two years in Dawson?

A No, I was nine months out when I made a trip back in 1915.

Q When did you first go to a mining state?

A In '83.

Q In '83. What state?

A Colorado.

Q How old were you then?

A When I went to Colorado? About twenty.

Q About twenty. What year were you born?

A In '60.

Q That would make you twenty-three wouldn't it?

A It might—I never figured it out.

Q That would knock at least three years off your experience as a miner. I understood you say you were sixty years old?

A No sir.

Q No? It was a mistake?

A Sixty-two years old.

Q Where did you go in Colorado—what part of the state?

A Linwood Springs.

Q What part of the state is it?

A In the western part.

Q In a mining section?

A Yes sir.

Q How long did you remain in Colorado?

A Twelve or fourteen years.

Q Did you locate any mining claims there?

A No sir.

Q Did you own any mining property in Colorado?

A No sir.

Q What did you do besides working around mines?

A That's all I did—worked around mines.

Q What kind of mines?

A Quartz mines.

Q As a laboring man?

A Yes sir.

Q You had no experience with the law in Colorado?

A None whatever.

Q Where did you first make a mining location yourself?

A In the Kootenais.

Q Where was that?

A In British Columbia.

Q When was that?

A In 1905 and 1906.

Q Then you were in British Columbia in 1905 or 1906.

A Yes sir.

Q How long were you in British Columbia?

A Two years.

Q What kind of mining claims did you acquire there?

A Quartz.

Q Did you locate them yourself or purchase them?

A Located them.

Q How many?

A Two.

Q Did you work them?

A No sir.

Q Where did you next acquire mining property?

A In Dawson.

Q When was that?

A 1901.

Q Did you acquire it by purchase or location?

A By location.

Q How many claims?

A One.

Q What kind were they?

A Placer.

Q Where did you next acquire mining claims?

A In Fairbanks.

Q You mean in the Fairbanks district?

A Yes sir.

Q And where?

A Solo Creek.

Q How many?

A One.

Q Where else? Is the one claim all you ever acquired on Solo?

A Yes sir.

Q By location?

A Yes.

Q Where next?

A In Totatlaneka.

Q What kind?

A Placer.

Q How many?

A I don't remember about how many—must have had six or seven.

Q You located them?

A Some were located for me.

Q But you located some yourself?

A Yes, I did.

Q Did you acquire any quartz claims there?

A No sir.

Q Where next did you acquire mining claims?

A As near as I can remember, Kantishna was next.

Q When was that—what year?

A 1919.

Q Didn't you acquire other claims here?

A I might—but I don't remember.

Q You don't remember any other claims around Fairbanks recording district?

(Mr. Stevens objects as not proper cross-examination, but Court rules it may be admitted.)

Q What did you do with your claim on Solo Creek?

A Let it go back.

Q Did you do any work on it?

A I did the first assessment.

Q What did you do with the claims on Totatlanika?

A They all went back.

Q What work did you do?

A Prospected a couple of years.

Q And let them go back?

A Yes sir.

Q What experience have you had in lode mining, except the experience that you had as a laboring man working on a lode claim?

A The experience I have had? Have been

working off and on in quartz mines for the last forty years.

Q I am talking about quartz mines distinctly. Did you—that is before you went to the Kantishna—did you ever run a quartz mine?

A No sir.

Q Did you ever do anything around a quartz mine except common labor?

A I was a miner.

Q I mean as a common miner or timberman?

A Yes sir.

Q Did you ever run a power drill?

A Yes sir.

Q What kind?

A Ingersoll-Rand.

Q Where?

A In Aspin, Colorado.

Q The only experience you had as a quartz miner, aside from your experience in the Kantishna, was experience you had in quartz mines as a laborer in the state of Colorado?

A And British Columbia, yes.

Q Then you did have experience in British Columbia?

A Yes sir.

Q Where?

A In Noble 5, Eureka Mines.

Q What were you doing there?

A Mining. Was pounding a drill most of the time.

Q By hand?

A Yes.

Q How long was that?

A For two years.

Q When you went into the Kantishna, from where did you go this last time that you went into the Kantishna—I believe you said you went into the Kantishna in 1905 or 1906?

A No sir.

Q Where did you go from when you went to the Kantishna the first time?

A From Fairbanks.

Q When was that?

A In May 1919—left here the 27th day of May 1919.

Q Did you go as an employee?

A I did, yes.

Q Of whom?

A Mr. Aitken.

Q How long did you remain in Mr. Aitken's employ?

A Up until the last day of June 1921.

Q Have you not been in his employ since?

A No sir.

Q Do you represent him?

A No sir.

Q Your relations with him have ceased?

A Yes sir.

Q The last day of June 1921?

A That is the last day, yes sir.

Q That was after these defendants had located their quartz claim in the Kantishna—the one in controversy?

(Mr. Stevens objects to question as a fact

not appearing in the evidence. Mr. Roth agrees to let it go.)

Q When you located this quartz claim there you called it the Hillside Lode Claim?

A Yes sir.

Q And I believe you stated you made that claim 50 ft. in width?

A Yes sir.

Q How does that come?

A That is all I was allowed through a placer mining claim.

Q Then you know—you understand that if that placer claim is valid, that quartz claim can only be 50 ft. wide?

A That is the way I understood it, yes sir.

Q And you know if the quartz claim holds that the placer—that is if the placer claim and the quartz claim are valid, that the placer claim will stand except for a strip 50 ft. wide? If the placer claim is a valid location, and the quartz is valid too, then the placer claim will stand as a valid placer claim to all the area except a strip 50 ft. wide and the quartz claim will stand as a good quartz claim 50 ft., and the placer for all the balance. You understand that, don't you?

A I understand, with the exception of what Quigley took off.

Q I am talking about just simply the claim of defendants. If the defendants' claim stands as a valid quartz claim and the placer stands as a valid placer, as you understand it, your placer will stand, as far as the defendants are concerned, in its en-

tirety, except a strip 50 ft. wide?

(Mr. Stevens objects to cross-examination on the law. Objection over-ruled. Exception taken and allowed.)

Q What did you write on the northwesterly corner post of the quartz claim that you located there? Did you put it down in a book at the time you wrote it?

A Yes sir.

Q Did you put down in a book what you wrote on the placer at the time you wrote it?

A Yes, it is here—but not the placer is here—simply a memorandum when stakes were placed, etc.—not what was on the stakes—just a memorandum.

Q I was talking about what was written on the stakes.

A Not that—simply a memorandum.

Q What did you write on the northwesterly corner stake of that lode claim that you attempted to locate?

A I wrote "Northwesterly corner stake of the Hillside Quartz Mining Claim, located July 25, 1921, Wm. Grant, Locator"—on all posts.

Q That is all you wrote?

A I think it is all—I wouldn't be sure.

Q Have you written it in a book?

A No, not that.

MR. STEVENS: You didn't write "northwest corner" on all posts?

A No, just on the northwest.

BY MR. ROTH:

Q Was there anything else you wrote?

A That is all I remember.

Q Would you remember if there was anything else?

A I think I would.

Q You think that is exactly what you did write?

A Yes sir.

Q What did you write on the northeasterly corner stake of that attempted quartz location?

A The same, with the exception of northeast.

Q What did you write on the southwesterly corner stake of that lode location attempted to be made?

A Same as the balance, except southwest.

Q What did you write on the southeast corner stake of your attempted lode location?

A The same except southeast.

Q The same, except southeast?

A Yes sir.

Q You say that when you did the assessment work on that placer claim, or when you were about to have it done, you went on to the ground with O. M. Grant and pointed out to him the place to do the work. Is that correct?

A Yes sir.

Q Where did you first go with him and show him where to work? Did I understand you to say that it was at the exact point where Campbell and Tobin, the defendants in this case, made a discovery?

A Yes sir.

Q How did you say you picked out that spot?

A I told him to sink here for the assessment on the placer and if the lead didn't come through he might find some float.

Q That is what you told Mr. Grant?

A Yes sir.

Q Did you tell him how deep to sink?

A No sir.

Q Where else did you tell him to sink?

A I didn't tell him no place else to sink.

Q That is the only instruction you gave him—to sink in that one place?

A Yes sir.

Q And that you would have a couple of chances?

A Yes sir.

Q A chance to find the lode and—(Interrupted)

A And represent the claim at the same time.

Q When did you next go down to that placer claim?

A A few days later.

Q About how many days later?

A In about two days I went down.

Q Where was Mr. O. M. Grant working at that time?

A There on that hole.

Q The same hole?

A Yes sir.

Q He worked in that hole two days to your knowledge?

A Yes sir.

Q How deep was he in the hole at that time?

A I looked down there—didn't measure—and as near as I can remember, it was eight feet or over.

Q Was he two days going eight feet, or had he sunk some where else in that time?

A I don't know—that was the depth of the hole

Q Was there any one else there?

A Yes sir.

Q Who?

A Dan Sutherland and Trundy.

Q Did you give any directions as to the work at that time?

A No sir, he wasn't there.

Q What time of day were you there?

A In the evening.

Q What time?

A About five o'clock.

Q Do you know where O. M. Grant was?

A Yes sir.

Q Where was he?

A Going up towards his home on Eureka Creek.

Q He had quit his day's work?

A Yes sir.

Q Did you go down into that shaft at that time?

A No sir.

Q Did you examine the dump to see what kind of stuff came out of the hole?

A Yes, we looked at it.

Q What did you find?

A Broken-up schist, rock, gravel—and little of everything.

Q Did you find any float?

A No sir.

Q When did you next go back to that particular hole?

A I don't think I was at the hole again before I measured it and he had finished the assessment.

Q You went back and measured the holes?

A After he had done the assessment.

Q Did you put down the measurements in a book?

A On a piece of paper.

Q Who swore to the assessment work?

A O. M. Grant.

Q Have you that original certificate?

A Yes sir.

Q May I see it?

A Mr. Stevens has it.

(Mr. Stevens hands the paper to Mr. Roth who examines it and then hands to Mr. Grant)

Q Is that the original? Is that Mr. Grant's signature?

A Yes sir.

(Mr. Roth offers certificate in evidence as part of the cross-examination of this witness. Same is admitted and marked Defendants' Exhibit "1")

MR. ROTH reads Defendants' Exhibit "1" to the jury, as follows:

"Affidavit of Annual Labor. United States of America, Territory of Alaska, Kantishna Precinct. I, O. M. Grant, being first duly

sworn on oath depose and say: That during the year ending December 31st, 1920 and between the third day of November and the sixteen day of November thereof, 12½ days labor were performed upon and for the benefit and development of the placer mining claim known as the Hill Bench Right Limit of Moose Creek and adjoining Friday Creek in the Kantishna Mining and Recording District of Alaska. The improvements were made at the instance of Wm. Grant and consist of sinking nine holes that will average eight feet in depth, the work being done within 300 feet of the Initial Post and are of the reasonable value of \$100.00. That I have actual knowledge of the facts set forth in this affidavit. O. M. Grant.

Subscribed and sworn to before me this 15 day of Feb. 1921."

Notary (blank) (Seal)

(Mr. Roth stipulates he will not make a point of the fact that signature of notary is missing)

Endorsement:

"No. 3068. District of Alaska. Fourth Judicial Division. ss. Filed for record at request of T. P. Aitken on the 15 day of Feb. 1921 at 30 min. past 6 P. M. and recorded in Vol. 1 General, page 166. Kantishna Recording District.

(SEAL)

C. Herbert Wilson.

Recorder

Hill Bench"

BY MR. ROTH:

Q How did you say you lined up for that first hole you directed Mr. Grant to sink there—just what did you do in order to line it up?

A I looked up along to Quigley's discovery and lined the mouth of his tunnel—lined straight down and measured from Mr. Quigley's center post down 25 ft.

Q You stated you saw some ore or ledge matter that came out of this Campbell and Tobin discovery shaft that was not float upon which you based your discovery?

A No sir, I never said that.

Q What did you say?

A I said I found that on the dump but I never said I based my discovery on it.

Q What did you base it on?

A What was at the bottom of the hole.

Q You saw what came out of the hole.

A I saw it in the hole.

Q You went in the hole?

A Yes sir.

Q When did you go down in the hole?

A The latter part of September—I don't remember the date.

Q Where was Mr. Campbell and where was Mr. Tobin at that time?

A I didn't see them.

Q Do you know where they were?

A No sir.

Q They were not there?

A No sir.

Q You didn't go down until the latter part of September?

A No sir.

Q I understand you located your claim before that, didn't you?

A Yes sir.

Q Didn't you claim a discovery before you went into the hole in September?

A Yes sir.

Q What did you base that discovery on?

A I based it on what I found on the dump and also on a known lead.

Q How did you know it was a known lead?

A I knew it was a known lead by all reports.

Q By all reports?

A Yes.

Q It was commonly known?

A Yes sir.

Q It was commonly known to be a quartz lode and also it showed on the Dump? You knew it for some time?

A Yes, for some time.

Q When did you first yourself learn that there was a known lead there?

A In July—the latter part of July.

MR STEVENS: What year?

A 1921.

Mr. Roth objects and desires to be permitted to question the witness without counsel interrupting. Court agrees that it is his privilege.)

BY MR. ROTH:

Q You staked down how many feet from that

hole when you located your quartz claim—from the hole, down how much did you stake?

A 1500 ft.

Q From Quigley's line you staked down 1500 ft.?

A Yes sir.

Q From Quigley's line to your quartz line was how far?

A I didn't say.

Q How far was it?

A What do you mean?

Q From Quigley's lower end line of the Red Top down to your lower line of the placer claim—the way you staked it?

A Fourteen hundred and some odd feet.

Q From Quigley's line down to the end of your placer?

A I never measured it.

Q How far would you estimate the distance to be?

(Mr. Stevens objects on account of map being drawn to scale. Court rules that witness can state if he knows.)

A I don't know.

Q Can't you give me any idea?

A Can make a rough guess.

(Mr. Stevens objects to a rough guess, but Court over-rules.)

A I would guess somewhere between 400 ft. and 500 ft. probably more or less—I can't tell.

Q Now, the claim you say at that time—at the time you staked your placer claim—adjoining

yours was the placer claim of John Hamilton—a well known placer claim?

A Yes sir.

Q You stake over it?

A Not over it—alongside of it.

Q No, with your quartz claim?

A Yes I was over it.

Q You staked down over it?

A Yes sir.

Q Did you at that time consider that it was a valid placer claim?

A No sir.

(Mr. Stevens makes objection and same is sustained.)

Q Did you stake down over more than one placer claim with your quartz claim?

I staked over the Hillside Placer Claim also the Horse Shoe.

Q Wasn't there another one?

A No sir.

Q Are you sure?

A I don't think so.

Q When you staked your quartz claim down on the Horseshoe Placer Claim, was there a well known lode on the Horseshoe Placer Claim at that time?

A No sir.

Q Did you put a number on the corner post of your quartz claim?

A Which corner post?

Q Any of them?

A Yes sir.

Q On the quartz claim?

A Yes sir.

Q What did you put on them?

A No. 1, 2, 3 and 4.

Q You are sure you did that?

A Yes sir.

Q When you came to staking your placer claim, did you put a stake of your own at your initial corner?

A No sir.

Q What was it you wrote on the initial corner post?

A What I recorded, with the exception of the date.

Q I am talking about the placer claim.

A I am talking about the placer, too.

Q You put on that corner post just what was on the notice of location?

A With the exception of the date.

Q And you copied—in order to make that notice of location, you copied off of your original notice of location stake?

A Yes sir.

Q And you copied off there and took it and had it recorded?

A Not right away.

Q But the same one?

A Yes sir.

Q You put everything there on the stake in that notice?

A I think I did.

Q You copied it and that was your purpose?

A. Yes sir.

Q What did you have on the second post—on the southeastery corner post of your placer claim—what did you have written on that post?

A No. 2 Post on top—Bench Claim—Hillside. Placer Claim. Do you want the date, month and year?

Q Everything.

A "April 19, 1920, claiming 1320 ft. to post No. 1, 660 ft. to post No. 3."

Q Anything else?

A "Staked for placer mining purposes. Wm. Grant, Locator" I am not sure whether I had John Hamilton as a witness or not.

Q That is all on that stake?

A That is all I remember.

Q Did you copy off that too when you made your certificate which you afterwards filed?

A No sir.

Q Now when you went there the next day as you say—which would be on the 20th day of April 1920—

A Yes sir.

Q —you set the corner post that is now above Quigley's cabin?

A Yes sir.

Q Was any one with you when you set that stake?

A No sir.

Q You came from where when you set that stake?

A From down hill—from the mine.

Q From whose mine?

A Aitken's mine.

Q What time of day was that?

A In the forenoon.

Q And where did you get the stake?

A I had the stakes—had a team leave the stakes—all the stakes.

Q Who was the teamster?

A One of Bartlett's teamsters who was hauling wood.

Q Where did he leave them?

A He left them down near the lower line—all of them.

Q Near the initial stake?

A Yes, but over to the center of the claim where the road came up through.

Q How many stakes did he leave?

A Four.

Q What did you do with them?

A Took two to the upper corners and the other two were for the lower corners.

Q What did you do with them?

A I left them—didn't use them.

Q You never put them up?

A Not then.

Q You never put two up on the lower side line of your claim?

A No sir.

Q What did you write on that stake which stands above Quigley's cabin—where Quigley's cabin now stands—what did you write on the stake at the time you set it there?

A "Corner post No. 4 of the Hillside Placer Mining Claim located July 19, 1920, Wm. Grant Locator"—and arrows, (I had arrows on all of them, I forgot to mention), pointing down to discovery post, also pointing up to post No. 3, as near as I can remember.

Q And the same day I understood you to say you set your northeasterly corner stake of that placer claim?

A Yes sir.

Q How did you get along the hill between the northwesterly corner and the northeasterly corner?

A It wasn't bad, the snow had melted off and you could walk along the hillside when there was no snow.

Q Wasn't there any snow?

A No, not on the hillside—there was some snow in the draws, but patches where it had melted off.

Q When you went down there to set that northwesterly corner stake, what was the first thing you did when you got there with reference to setting the stake—what is the first thing you did?

A The northwesterly?

Q The northwesterly and the northeasterly.

(Mr. Stevens objects on account of there being two questions in one. Objection over-ruled.)

A No you mean post No. 3?

Q You know what the northwesterly stake of your placer claim is, don't you?

A Post No. 4.

Q I said the northwest and the northeast.

A I set them in the same day—went there for

the purpose of setting them.

Q I want to know the first thing you did.

(Mr. Stevens makes objection but is over-ruled. Takes exception which is allowed.)

Q Is that the first thing you did was set the post there?

A No. 4, yes.

Q Did you have it there?

A No, I went down and got it.

Q I will ask you where it was left.

A Where were they?

Q Yes, where were they left.

A The road comes up hill—

Q Up hill?

A And half ways up the Horse Shoe Bench the post was thrown off there.

Q In about the center of the Horse Shoe Bench?

A Not quite the center.

Q Which way from the center?

A Nearer north than the center.

COURT: Towards the initial stake?

A Yes sir.

Q How far from the initial stake—about, were they when you went and got them?

A 350 ft. to 400 ft.

Q That would be towards the center of the Horse Shoe Bench from your initial stake about 350—400 ft.?

A It isn't in the center.

Q I said about 350 ft. to 400 ft. from your initial stake?

A But nearer this line—near my end line on

the Horse Shoe Bench than the other way.

Q Were you on snow shoes that day?

A No sir.

Q When you went down and got that stake, did you take both of them up to the northwesterly corner?

A Yes sir.

Q Where was Quigley on that day, do you know?

A I didn't see him at all.

Q And after you set the northwesterly corner stake, then you carried that other one over to the northeast corner and set that?

A I did.

Q Those are the two identical stakes that were there when you were there with Alois Friedrich a short time ago?

A I was not there with him.

Q Weren't you over there at the time?

A No sir.

Q You were not in the Kantishna then?

A No, I was on the claim, but not the day that the lines were drawn.

Q Were you to the stakes while you were over there?

A No sir.

Q You didn't go to the stakes?

A No sir.

Q When was the last time you saw the stakes?

A Before I came out last fall.

Q You went to each one of them?

A Yes sir, went over them all.

Q Before you came out last fall, you found your northeast and northwest stakes to be the same stakes as when you located the claim?

A The northwesterly is the same stake, and the northeasterly is the same stake only it was down and I set it up.

Q But the same stake?

A There are two stakes now—the stake I set up first, also one I made and carried up there last fall. I looked up and couldn't see it so carried up another and found it was laying on the ground and I set them both up together.

Q Both of them were left and are there now?

A When I left last fall, yes.

Q How big a stake is the one in the northwesterly corner?

A The last one—(Interrupted)

Q I mean the northwesterly—is that the same stake you set there?

A In the northwesterly corner, yes.

Q What are the dimensions of that stake?

A The first one I put up—(Interrupted)

Q Were there more than one put up there?

A Do you mean post No. 3?

Q I mean the northwesterly corner stake?

A Yes, it is a big stake—the largest on the claim.

Q There was never a second one put up to your knowledge?

A No never; it is right close by the road.

Q You say it was six inches in diameter?

A Yes sir.

Q Not less?

A I didn't measure—it might be less.

Q How much less might it be?

A It might be one inch—no more.

Q It was a dry stake when you put it up?

A I don't remember whether it was or not. I only know they were both heavy to carry up hill, but I don't remember whether they were dry.

Q You hewed them yourself?

A Squared them, yes.

Q What did you square them with?

A An axe.

Q Did you square them right at the corners or before you carried them up there?

A Right on the road before I went up there and put it on a pile of rocks.

Q You did it right there at that time?

A There at that time, yes sir.

Q And you did the same with reference to the other stake—that is the northeast one?

A Yes, I made the northeast when I made the northwest.

Q Did you do that right there on the road before you carried it over?

A Yes sir, before I carried it over.

Q Was it a dry stake or green?

A It wasn't as big as the other—it was smaller—picked out the lightest one to pack over.

Q It was dry?

A I think so.

Q Both spruce stakes?

A Spruce, yes sir.

Q Where was it that you claimed you made your discovery on the placer claim?

A Right about where the cabin now sets—there is high bed rock there.

Q Wasn't it in front of where the cabin now sets?

A No sir, above it.

Q How far away from the cabin?

A Oh, a few feet.

Q What did you do there towards making that discovery?

A I dug down—took off the moss—and dug down to slide.

Q How deep?

A It wasn't more than two feet.

Q Was it two feet?

A Yes.

Q How many places did you dig?

A Two.

Q How close together?

A I dug three places all together, but panned out of two.

Q You dug three but panned only two?

A Yes sir.

Q Where did you get that pan?

A I brought it down from the mine.

Q From Aitken's mine?

A Yes sir.

Q Was any one with you?

A No sir.

Q That was on the 10th day of September?

A Yes sir.

Q 1919?

A Yes sir.

Q Did you pan any place else on that claim?

A No sir.

Q You never did?

A No.

Q Did you ever point out to any one where you had made your discovery on that placer claim?

A I believe I told when I showed Grant—believe I showed him where I made discovery over there.

Q Did you never show any one else?

A No, I never did.

Q Where did you pan the dirt?

A I panned two pans on Friday Creek and the other one I took up to the mine and panned.

Q Was any one present?

A No sir.

Q Where did you pan it—in the boiler house?

A No, in the bunkhouse—had a tub.

Q Did you keep a pan there for the purpose of panning?

A Yes sir, we had a pan there all the time.

Q You used it in your work?

A Yes sir, when we assayed. Kept it in the assay office.

Q But no one was with you at the time?

A No one.

Q At the time did you tell any one?

A No sir.

Q What did you get when you dug there where

you made a discovery?

A I got slide, bed-rock, slide and schisted bed-rock, some gravel and sediment—sandy sediment.

Q You got gravel?

A Some gravel.

Q This was not slide matter that slid down off the hill?

A I expect so.

Q You are sure there was gravel?

A Yes, there was gravel.

Q Besides this assessment work you did there—you had done there in 1920, what, if anything, did you do on the placer claim as a 'placer claim?

A I hadn't done anything up to that time. I went up there and put a tent up.

Q I mean at any time have you ever done anything besides the assessment work that you had done in 1920. What did you ever do on it as a placer claim?

A I built a cabin, sunk a hole, put up a tent—

Q Where did you sink a hole?

A Sunk a hole down towards the lower line.

Q When did you sink that hole?

A Last fall—last September.

Q That isn't on the map, is it?

A No.

Q Where was it from your initial stake of the placer claim ?

A A little over 150 ft.

Q What direction?

A Southeasterly.

Q You mean northeasterly. You say 150 ft.

from the initial stake?

A Yes sir.

Q How far was it from the side line of your bench claim that joins Hamilton's claim?

A About 100 ft. straight up.

Q About 100 ft.?

A Yes sir.

Q How deep did you sink the hole?

A I sank it about 9 ft. and timbered it.

Q Who was with you?

A No one was with me. Mr. Quigley nassed several times but no one was with me.

Q When did you do that work?

A Last fall.

Q About what time?

A About the fore part of September.

Q Did you do that for assessment work?

A I was figuring on trying to get to bed rock but got drowned out. I timbered it up but then it filled up with watetr.

Q Those holes you sunk in 1920 by O. M. Grant—the water came into them?

A Yes.

Q Each one of them?

A No, some the water didn't stay in if it did come in.

Q What ones was there no water in when you examined them the last time?

A These ones below—these three (Indicating on map)

Q Those in line with the lode?

A Yes, but they aren't in line with the lode.

Q How far off are they?

A According to Mr. Friedrich's measurements some are 30 ft. off the line, some 20 ft. off the line. I have helped tape that and if I remember right, there are one or two over 50 ft. off.

Q You take this hole 12 ft. from the discovery shaft of Campbell and Tobin. Was there water in that?

A When I seen it, there was no water in it.

Q When you went over with Alois Friedrich and you helped tape, was there any water or ice in that hole?

A No.

Q That was a dry hole?

A I didn't see the bottom—they had all caved.

Q Wouldn't that indicate there had been water in it?

A No, they cave without water when the ground thaws out.

Q Every time?

A Unless you have it extra cased.

Q It will cave a whole lot?

A Quite a bit.

Q How far will an average hole cave when it stands over a winter?

A When it stands over a winter, it wouldn't cave—it freezes back. New frost goes way into the sides and does not thaw, but a new hole will cave. The frost only cases it, so the hole—

Q The hole that is dug in the winter time, not cased I am talking about—a hole dug there, say

8, 9, 10, 11, or 12 ft. that is not cased—wouldn't that cave?

A It will in summer if it is newly dug.

Q If it is dug in the winter?

A No, sir, it wouldn't cave—it freezes back.

Q It wouldn't cave much the next summer even though it isn't timbered?

A It will thaw out and cave some, but not as bad as a hole dug in the spring.

Q When you went to this shaft of Campbell and Tobin the first time, did the surface of that shaft show that it had caved in?

A Which time do you mean?

Q The first time you saw it after Campbell and Tobin were working there.

A It was timbered.

Q You couldn't tell whether or not it had caved?

A No, I couldn't see it for the timber.

Q This point on this plat here which is marked Plaintiff's Exhibit "A", designated as corner No. 5, Were you there when that was put in?

A No sir.

Q Did you order it put in?

A No sir.

Q You had nothing to do with it?

A No.

Q That was put in by Mr. Friedrich on his own initiation?

A I don't know anything about it.

Q You said something about going down there and talking to Mr. Quigley when Mr. Quigley was

excavating for his house.

A No, I didn't say it.

Q Didn't you say that he said he was preparing to build there?

A I didn't go down to talk with him.

Q But you were there and talked with him when he was excavating for his house?

A Yes sir.

Q Was that before or after this assessment work had been done by O. M. Grant?

A Before.

Q Are you positively sure?

A Yes sir.

Q Are you sure of anything you said?

A Yes sir.

(Mr. Stevens makes objection which is sustained)

Q What was said at that time?

A I said, "Joe, you will soon have work enough done for the assessment." "Oh," he says, "This isn't on your placer at all."

Q That is all that was said?

A At that time, yes.

Q Did you have another talk with him about the assessment?

A Yes sir.

Q Where was that?

A A few days later on—

Q At the same place?

A Near there, yes.

Q What was said at that time?

A He says, "Billy, I will do the assessment

work on the ground if you turn it over to me." I says, "Oh no, I wouldn't do that."

Q That was all that was said?

A That was all that was said.

Q Where—about were you when the conversation took place?

A Standing along the road where the road goes down.

Q Was anybody present?

A Nobody present.

Q Do you know a man they call Big Sandy?

A I do.

Q What is his name?

A I believe his name is Burrows.

Q He is a teamster?

A Yes.

Q Wasn't he present?

A He wasn't in the country at that time—not until a year later.

Q What year was it?

A That was the fall of 1920.

Q And Sandy was not there until 1921?

A He might have been there in the latter part of 1920, but he was not there then.

Q Didn't you have this last talk referred to—didn't you have it with Joe Quigley where he was working in one of his holes in tracing that lode down below the point of discovery?

A No sir, I never visited those holes. I visited his discovery and that is the only hole I was ever at.

Q Now, in about the month of August or Sep-

tember of 1920, there being present yourself and a man known as Big Sandy, at a place about 75 ft. up the hill from the blacksmith shop on the lode claim known as the Red Top Lode Claim of Joe Quigley, did you not have in substance the following conversation with Joe Quigley, in which you asked Joe Quigley what he was doing, and to which he answered he had dug up a pretty nice looking prospect, in which he stated further that he was looking for you to come along as he wanted to get a building site on the flat below on your placer claim, to which you said, Yes he could get a building site if he would turn that work in as representation work on the placer, and to which he replied that he did not think it was on the placer at all: and in which you said, "Oh yes it is, don't you see that stake up there." pointing to the stake above where the warehouse now stands. Did you have such a conversation?

A No sir, and more than that, I was never there with Big Sandy.

Q Did you not, a short time after that in the same year and before the assessment work was done by O. M. Grant on the placer claim, yourself and Joe Quigley being present alone, have the following conversation somewhere on Quigley's Red Top Lode Claim, and at the time when he was working on that claim, in which Mr. Quigley said to you, "If you will make me a bill of sale of that placer claim, I will keep the representation work done on it, as I understand that you located it for warehouse purposes anyway", in which you said you

could'nt do it as you were working for Tom Aitken and you located it for Tom Aitken and that it belonged to him and he would have to see him about it.

A I never made such a statement at all—never.

Q Not in substance—nothing like it?

A No sir, nothing like it. If you will allow, I will tell you what I did tell him.

Court: He may say what he told him, confining his statement to what he said to Quigley at this particular time.

A I told Mr. Quigley that Aitken wanted some place to put up a warehouse and he could put it up on that claim, providing I would get the use of it.

MR. STEVENS: Use of what?

A Use of the warehouse.

MR. ROTH:

Q Do you know of Quigley having gone to Aitken and having gotten permission from him to build his house where he did build it? Do you know that?

A No sir.

Q You don't know it?

A I don't know.

Q Do you know of Quigley having gone to Aitken and gotten permission from Aitken to dump on the placer claim?

A No sir, I don't know.

Q Did you ever make complaint about Quigley being on your placer mining claim with his lode claim?

A No, I didn't.

Q Never made any complaint?

A No, I never made any kick.

Q Did you know how many places that Quigley had opened up that lode along its line there? I mean prior to the time that these defendants went in and located their quartz claim.

A I don't.

Q Did you ever go to this discovery shaft?

A Once.

Q When?

A After he started to dig.

Q After he made discovery?

A I don't think he had made discovery yet—might have been more or less of a discovery as he had float on the way down, but did not have rock in place when I was there.

Q You never did see rock in place?

A No.

Q You didn't see it any other place except in the tunnel?

A No sir.

Q Did you go back to the face of the tunnel?

A I did.

Q Could you tell from anything you saw there how wide the ledge is?

(Mr. Stevens makes objection which is over-ruled. Exception taken and allowed.)

Q Could you tell how wide that ledge is from anything you saw there?

(Mr. Stevens objects. Objection over-ruled. Exception taken and allowed.)

A I don't know how wide it was.

Q Couldn't you tell? Didn't the tunnel show how wide it was?

A The tunnel showed where the ore was in a kidney—a kidney here and a little farther nothing.

Q I didn't ask about the ore. I asked about the width of the lode. The lode may be filled with ledge matter that is not ore. Ore runs in shoots, does it not? I am talking about the width of lode so far as you could ascertain its width from any work done in the tunnel.

A The tunnel at the face is small—it is narrow so they wouldn't have to timber. The face of the tunnel looked like nearly all lode. The tunnel was small—not over at that point, 2½ ft. to 3 ft. high.

Q Was the tunnel perfectly straight?

A No.

Q That would give an idea of the width of the lode?

A No.

Q Then the lode didn't run straight at all?

A The vein don't—it is twisted sometimes in this direction and sometimes off to this side. (Indicating)

Q What was the distance between the walls of that lode?

MR. STEVENS: Do you mean the walls of the vein or the walls of the tunnel?

MR. ROTH:

Q What is the distance any place you could ascertain there between the walls of the lode?

A On that Quigley hill, in that tunnel there is

no walls. Simply first—on both walls no contact—simply you might have a wall and tomorrow there would be no wall at all.

Q There are walls sometimes?

A There are really no walls—there are slips.

Q That is what I call a wall. How far was it between what you call slips on one side and slips on the other?

A At the mouth of the tunnel?

Q Any place in the tunnel.

A There was places I seen there might be 3 ft or 4 ft., probably more, and places only 15 inches, and less.

Q Now, you said something about horses you loaned to William Campbell.

A Yes sir.

Q You didn't charge him anything for them?

A I did not.

Q Was it you who loaned him those horses?

A Yes sir.

Q Whose horses were they?

A They were mine.

Q At that time?

A Yes.

Q Were they yours when he first got those horses?

A Not while he was hauling wood on the hill—not while he was working for Aitken. They were my horses after the first of March—from then on.

Q Isn't it true that his arrangement about those horses was made entirely with Tom Aitken and not with you?

A No.

Q Isn't it true he had the horses for their feed?

A He give them horses with contract for landing wood for so much to furnish horses and feed them.

Q But after that when he kept the horses, isn't it true that he made arrangements entirely with Tom Aitken?

A The horses stayed back—we fed the horses six weeks in the stable and took them to Roosevelt. He didn't have the horses at all.

Q Isn't it true that Tom Aitken tried to sell that span of horses and the whole outfit with them to Campbell?

A That is true. He offered them to him and Mr. Campbell wouldn't take them. When he didn't take them, he turned them over to me and said, "If you want them for their feed, take them, I won't keep them any longer." So I took the horses and paid for their feed.

Q Didn't Campbell feed them when he had them?

A Yes, he half-starved them.

Q You can tell then what he said then.

A He had them twenty-one days on 1000 lbs. of feed—50 lbs. apiece.

Q You wish to be understood positively that that is true?

A Yes sir.

Q Where had he got the feed?

A At Roosevelt.

Q It was Tom Aitken's feed?

A Yes sir.

Q If he would show a receipt that would show that he had paid \$112.75 for the time he had the horses there, will you say that was correct?

A I will have to figure up the feed.

Q What would they pay for feed?

A Oats \$10.75 a sack and hay \$9.00 a bale.

Q What kind of horses were they?

A Fairly small horses—got them in Fairbanks.

Q One was an old fire horse?

A No sir, not that I know of.

Q The little mare was very old—the bay?

A Some say she is and some say not. Mr. Quigley says she was the first animal in Fairbanks and Jack Howell says she is a young mare.

Q You say you don't know that it was an old fire horse from the town of Fairbanks?

A No I don't know.

Q How small a horse?

A Between 1100 lbs. and 1200 lbs.

Q Was it that much?

A I think so.

Session 2:00 P. M. February 3rd, 1922.

WILLIAM GRANT, witness in his own behalf, heretofore sworn, testified:

Cross Examination, (Continued.)

BY MR. ROTH:

Q You say you had a conversation with Mr. Quigley last September—that would be September 1921—before you came out of the Kantishna?

A Yes sir.

Q What did Mr. Quigley say to you in that conversation?

A He said the tunnel wasn't on the placer.

Q What brought about that conversation?

A I measured the placer at that time—measured up from the lower end line to the mouth of the tunnel.

Q What brought about the conversation?

A I went up with the tape line and I says, "Joe, the tunnel isn't on the placer." "No," he says, "the tunnel isn't on the placer:"

Q Who was with you at that time?

A Mr. Tuell.

Q Who helped you measure?

A I measured it myself.

Q Now you say that when Mr. Campbell came over there with the team to Roosevelt he stayed there how long?

A A few hours.

Q He didn't stay all night?

A No sir.

Q Are you sure he didn't?

A I am sure.

Q Didn't Geo. Wesch make him a bed on the floor?

A No sir.

Q Now with reference to the time you put up those notices that you call trespass notices. When was it you posted those notices?

A Some time in June—the latter part of June.

Q Have you the date?

A I don't remember whether I have the tres-

pass notices down here or not. It was towards the end of June. It was the first mail going through after the break-up. It was in June I know. (Refers to memorandum book) No sir, I haven't got it.

Q Did you put those notices up the first trip you made from Roosevelt there?

A Yes sir.

Q Are you sure it was the first trip?

A Yes sir.

Q Who came with you this time you made the first trip?

A George Moody, two Mr. Ellis' from California, Doc Layman and Mace Farrar. I think that is all.

Q You made a trip before that?

A No sir.

Q Do you know a man by the name of John Biglow?

A Yes, John Biglow was with us.

Q Yes, but didn't John Biglow go with you a trip before that?

A No sir, that is the first trip.

Q With whom did George Biglow come to Roosevelt—I mean John Biglow?

A He came to Roosevelt at the same time.

Q Be sure. Didn't he come with George Black?

A I guess you are right. George Black and Moody came within a few days of each other.

Q Just as soon as John Biglow got there with George Black, didn't he start with you immediately—didn't you start immediately after John Biglow got there, before the mail got there, and you went

over to this placer claim on the 23rd day of June—I will make it exact?

A No sir, I couldn't have done that—it would be impossible.

Q Didn't you right there on that placer claim and just a short distance from the discovery shaft of Campbell and Tobin, introduce John Biglow to Joe Dalton, after which didn't you and Joe Dalton and John Biglow go up to Quigley's house?

A Yes sir.

Q And that was not the trip you took the mail?

A Yes sir.

Q You are sure it was the trip you took the mail?

A Yes sir.

Q You are clearly sure about that?

A Yes sir.

Q And isn't it true that you left there the next day and went back to Roosevelt and then brought the mail and this crowd of people of whom you mention over, arriving over there in the vicinity of this claim on the 3rd day of June—to be exact?

A No sir.

Q When was it you got this information from Jake Howell that Campbell and Tobin were on the placer claim—on the Hill Bench placer claim?

A When navigation opened.

Q When was that?

A Along towards the first of June—about the first of June, or probably in June.

Q Is he the first one that gave you the information of that?

A Yes sir, as soon as the 'Reliance' got in.

Q Who came up on the "Reliance"?

A Jake Howell came up on the 'Reliance' into the Kantishna and came back out and went down river.

Q When he came back out?

A Yes sir.

Q You say it was about the first of June?

A I didn't give any date, but it was after navigation opened.

Q But navigation opened earlier than that, didn't it?

A The boat had to go from Fairbanks up and it took some time.

Q What was it you told Campbell when he left the horses?

A I told him I would be up as soon as I got through there to go to work on the placer claim.

Q Did you tell him what work you and George Wesch were going to do.

A No sir.

Q Didn't you tell him you and George Wesch were going to go there and pick up Quigley's lode?

A I did not.

Q Was you or George Wesch going to work that claim as a placer claim?

A Yes, we were going to do work.

Q Were you going to do work on it as a placer claim?

A Yes sir.

Q For placer purposes?

A I don't remember what we were going to do

—whether it was placer or quartz. I don't think that had been determined when we went up.

Q How much gravel did you see on that claim?

A This last hole I dug last fall—(Interrupted)

Q I am talking about before that, at or before the time these defendants entered upon their quartz claim and made a discovery. How much gravel did you see on that trip?

A In them holes that were dug and exposed there was gravel through them all—in all the dumps.

Q It was not slide, was it?

A There was some slide, yes. In some holes there was slide, and others not.

Q Were any of them pure slide and no gravel?

A There was more or less slide mixed. Was up on the hill and among that slide there was wash gravel—towards the bottom of the holes gravel shown up.

Q To what extent?

A Would find chunks of gravel through the slide.

Q From the time you staked the ground on the 19th day of April 1920 up to the first day of June 1921, you didn't do any development work on that claim as a placer claim, did you?

A Yes sir.

Q What did you do?

A I sunk them holes.

Q That was assessment work. Did you do any development work on the claim?

A No.

Q Have you done any work at all?

A Yes sir.

(Mr. Stevens makes objection to the question which is not acted upon as witness had already answered.)

Q Now you say you sunk a hole last fall before you came out here?

A I started it, yes.

Q How deep did you sink it?

A Nine feet.

Q Wasn't it only four feet?

A Nine feet—I measured it.

Q You measured it?

A Yes sir.

Q And did anybody interfere with you doing that?

A No sir.

Q Nobody interfered?

A No.

Q Now will you explain to me, Mr. Grant, how it comes you are so very positive that the discovery shaft of Campbell and Tobin was the hole that you caused O. M. Grant to sink 12 ft.—the first hole at the place where you indicated?

A I positively know the hole.

Q Alright, explain how you positively know that hole.

A I measured that hole from Quigley's center end line stake of his claim 25 ft. down.

Q When did you measure it?

A Before he started to work.

Q Before who started to work?

A O. M. Grant.

Q You measured it?

A Yes sir.

Q Now there is another hole there within 12 ft., is there not?

A Yes sir.

Q And that hole that is within 12 ft. you say O. M. Grant did not sink?

A Yes sir.

Q How do you know he did not sink it?

A I was there off and on when he was working and he showed me the holes he dug, and I measured every one. I was there and accepted the work and I know that hole wasn't there then.

Q Because you measured it?

A I measured them all.

Q How did you measure?

A I measured all with a tape line.

Q You of course, were not there when Campbell and Tobin started to sink?

A No sir.

Q Now at this time that O. M. Grant did the assessment work down there, what were you doing?

A I was working up on the claim.

MR. STEVENS: What claim?

A Aitken's mine.

MR. ROTH:

Q When you went in there did you take any outfit at all into the Kantishna personally, or was it all Aitken's outfit?

A No, I had stuff belonging to myself.

Q What was it?

(Mr. Stevens objects as irrelevant, incompetent and immaterial. Objection is sustained.)

Q Where was Tobin at that time—at the time the work was done by O. M. Grant on this placer claim?

A I don't know.

Q Where was Campbell?

A I believe Campbell was hauling wood or meat, if I remember right, at the time the assessment work was being done.

Q Did you try to get some one—(Interrupted)

A I think Tobin was doing assessment up on the hill—am not sure, but I think so.

Q Did you make any effort to get any one to help O. M. Grant?

A Yes sir.

Q How much of an effort?

A I tried all over the country to get a man.

Q Did you try Mr. Tobin?

A I think Mr. Tobin was already working—I am not sure. I know he did do assessment that fall.

Q Your idea about getting some to help sink a hole to bed-rock was because it was in line with Quigley's lode?

A No sir. It was to try to get to bed rock on the placer claim and probably if we found float there—

Q But at the place where you had lined up Quigley's lode?

A I never lined up Quigley's lode.

Q Didn't you say you lined up with Quigley's lode and that you directed O. M. Grant accordingly?

A I did.

Q At that place you wanted to sink a hole to bed rock?

A Yes sir.

Q And that was in September—or what month was it he did that work—in November?

A November.

Q November 1920?

A Yes.

Q And you couldn't find any one to help do the work?

A No sir. I had to send to Glen to get a man to do assessment work on Aitken's property.

Q You hunted all over the country and stated you couldn't get a man to help Grant go on the windlass?

(Mr. Stevens makes objection, same being over-ruled. Exception taken and allowed.)

A I asked several around there and asked Grant to try and get his partner but at that time he was hunting in the sheep hills and he couldn't get him.

Q Now you stated you staked a claim up on Friday Creek a placer claim.

A Yes sir.

Q When did you stake that claim?

(Mr. Stevens objects as not proper cross examination. Objection over-ruled. Mr. Stevens makes further objection on the ground that it is not best evidence when he staked it, as that claim is not in controversy in this suit and it is absolutely immaterial. Objection over-ruled.)

A No. 1 placer claim south of Friday Creek, April 19, 1920.

Q The same day?

A Yes.

Q Joe Quigley was up there with you?

A Yes.

Q You staked it for Tom Aitken?

A I staked it for William Grant.

Q You didn't stake it for Tom Aitken in your name?

A I did not.

Q And didn't Quigley go up there and show you where the corners were for the purpose of staking for Tom Aitken?

A He did not.

Q Let me call your attention again to this stake up here—this northwesterly corner stake of your placer claim—on that same day, being the 19th of April, 1920, is it not a fact that Joe Quigley went with you personally, after you had written on this southwesterly corner stake of the Hill Bench Claim—didn't Joe Quigley go with you personally up to the northwesterly corner stake of the Hill-side Bench, you picking up the stake on the way and wasn't he with you when you set that stake, and didn't he help you put stones around the bottom?

A No sir.

(Mr. Stevens objects to Mr. Roth assuming a fact not in the testimony, being that the northwest corner stake was set on April 19th, whereas testimony shows it to have been set on the 20th of April. Court sustains correction, and Mr. Roth agrees.)

Q On the 19th day of April 1920 you wrote on the southwesterly corner of the Hill Bench Claim?

A No sir.

Q You didn't? When did you?

A On the 20th.

MR. STEVENS: Mr. Grant, will you please pay attention to the questions asked.

MR. ROTH:

Q I am talking about the southwesterly corner which you designate as your initial post. What date did you set that?

A April 19th.

Q On the same day, April 19th, is it not a fact that you and Joe Quigley went up on to Friday Creek and that you staked a claim there?

A No sir, it was taken before we came down.

Q But on the same day?

A Yes sir.

Q It is so, you staked it on the same day?

A Yes sir.

Q On that same day, isn't it a fact that when you came back from Friday Creek and you wrote on this initial post, that you and Mr. Quigley together went up to this post which now stands above Quigley's house, representing the northwest corner of the Hillside Bench Claim, isn't it so that Quigley went with you up there on the same day?

A I didn't put up that corner on the same day.

Q Isn't it so, Quigley was with you when Quigley picked up the stake you set up there, and that you hewed it off and carried it up there and set it,

and after setting the stake, you and Quigley went on up the hill?

A No, it is not so.

Q Do you remember Mr. Tobin coming over to Roosevelt in the month of June 1921?

A Yes sir.

Q Do you know what time of the month he got over there?

A No, I don't—I seen him there but—

Q Did you have any conversation with him about the work he was doing on the Hill Placer Bench?

A Not at all.

Q You didn't talk about it?

A No sir.

Q Did you know he had been on there at that time?

A Yes sir.

Q Why didn't you say anything to him then?

(Mr. Stevens makes objection, and objection is sustained on account of being immaterial. Exception taken and allowed.)

Q At any rate, at the time Mr. Tobin was over there, you knew that Tobin and Campbell was working there—had been working on a quartz claim that they claimed to have located and that they had sunk a shaft and were working on that ground. You knew it when he went over to see you about horses?

A Who did?

Q Mr. Tobin.

(Mr. Stevens makes objection, same being sustained.)

Q Did Mr. Tobin go over there to talk to you about purchasing those horses in the month of June 1921 at Roosevelt?

A Yes, he did say something about horses—wanted to know if I wanted to sell them.

Q At that time you knew that he was working on the superficial area of that Hill Bench Placer Claim, did you?

A No, I didn't.

Q You didn't know it at that time?

A I knew he had been there, but didn't know he was still there.

Q Had you heard that they had made a discovery by the time he was over there?

A I don't know whether it was before or after they made a discovery.

Q Now you say that in July of 1921 you first saw this hole that is designated on this plat as being about 12 ft. from the Campbell and Tobin discovery shaft. Do you understand the question?

A No sir.

Q I understood you to testify that in July you first saw that hole which is about 12 ft. from the Campbell and Tobin discovery shaft, which was then about five or six feet deep, and that it was a fresh hole.

A If I testified that way I was mistaken. I seen the hole when I went up to post the notices in June.

Q You first saw it in July?

A I saw it when Mr. Clark and I went up to

post the notices.

Q When who?

A Mr. Joe Clark.

Q What date was that that you went there to post notices?

A I can't give the date—it was the latter part of June. At that time I was a little mixed on dates as I had no calendar.

Q When was it you saw them raise material out of the hole that looked like ledge matter?

A When I went back and pitched a tent.

Q When was that?

A Between the 20th and 25th of July.

Q Between the 20th and 25th of July?

A Yes sir.

Q 1921?

A Yes.

Q Mr. Grant, when did you first notify Mr. Tobin and Mr. Campbell to get off that ground—personally?

A I never notified them personally—I couldn't find them. I notified them by registered letter and by notices.

Q You notified them by registered letter?

A Yes sir.

Q When was that?

A I don't remember that date—along in July some time.

Q This trouble that you say occurred between you and Campbell when you say he threw stones at you as big as your fist occurred along after Campbell and Tobin had bed-rocked their hole and

staked the ground? Didn't it?

A Yes sir.

Q What was the size of the rock that hit you on the back?

A About the size of my fist but a little long.

Q And it hit you pretty hard?

A It certainly did.

Q It knocked you down?

A Lost the use of my leg when I went down.

Q When did you recover the use of your leg?

A A few minutes after.

Q Were you ever examined by a doctor?

A I never was.

Q They had a doctor there and offered you this doctor for examination, didn't they?

A They never offered nothing.

Q Wasn't Dr. Sutherland there and wasn't his services offered you for examination?

A No sir.

Q Dr. Sutherland attended the hearing, didn't he?

A Yes.

Q Didn't you apply to him for examination?

A I did not.

Q How far was he away from you when he threw the rock?

A About twenty or twenty-five feet—probably thirty.

Q Do you recollect having a conversation with Mr. Tobin down about the side line of that placer claim there?

MR. STEVENS: Which side line?

MR. ROTH: I mean the southerly end line of Campbell and Tobin's quartz claim.

A Yes.

Q When was that?

A That was after I posted the notices when I was going back the first time with the mail.

Q Do you know the date?

A No, but Mr. Moody was with me—you probably can get the date from Mr. Moody—I was in charge of the mail—you probably can get it from him.

Q How does the road run along—I mean the road running up to Aitken's mine at that time?

A Coming up?

Q The main road enters towards the easterly end of the southerly end of the Hillside Bench claim near the center of it and goes in a northerly direction up to about the center of the claim—is that it?

(Mr. Stevens objects to counsel testifying.)

Q Tell how the wagon road runs.

A It starts in a southeasterly direction—it runs up in a—(hesitates)

COURT: Go ahead and as near as you can describe the course of the trail.

A It starts up in an easterly direction and swings around in a northerly direction, runs up below the mouth of the Red Top tunnel, on up above the Quigley residence, up to where No. 4 corner is, then swings back east and goes on up the hill.

Q Do you know where the Haney road joins that road?

A The Haney road joins it somewhere below the southeast corner of the Red Top.

Q How close to the southeast corner of the Red Top.

A I never measured it.

Q About how far—100 ft.?

A I couldn't say—I don't know—never paid much attention to it.

Q But it is on the Hill Bench Placer?

MR. STEVENS: What is—the junction?

MR. ROTH: Yes, where the junction joins.

A Yes.

Q It is on the Hill Bench Placer?

A Yes.

Q Do you remember having a conversation with William Campbell in the bunkhouse up at the Aitken mine in the evening after supper about February 1, 1921, in which Campbell (the Aitken crew being present but not being able to state just who they were)—in which Campbell stated that Quigley had started his tunnel, and when you asked him where he started the tunnel he stated about thirty or forty feet below the blacksmith shop, in which you stated that that was away below his line, and Mr. Campbell then stated, "No, his end line is fully 100 ft. below that," and in which you stated, "Well, I don't know about that," or words to that effect, "but I do know that it is below the side line of my placer claim", and in which you stated that Quigley could just as well have turned in that dead work as assessment work on the placer claim and have saved Tom Aitken \$100.00?

A I never made no such statement.

Q Did you have such a conversation?

A I had no such conversation in the bunkhouse.

MR. ROTH: That is all.

Re-Direct Examination

BY MR. STEVENS:

Q Mr. Roth has introduced in evidence here as Defendants' Exhibit "1", the affidavit of assessment work or labor by O. M. Grant. You examined it, did you not?

A Yes sir.

Q On the back of it, it states that it was filed at the request of T. P. Aitken. Do you know anything about how that came to be stated on there that it was filed at T. P. Aitken's request?

A Yes sir.

Q Explain.

A Mr. Wilson told me he would put my papers in with Mr. Aitken's and mark them so they would be all together.

Q You were working for Aitken at that time?

A Yes sir.

Q Were you present when Mr. O. M. Grant made this affidavit?

A No sir.

Q Do you know whether or not O. M. Grant made the affidavit before the Commissioner or just left it for filing?

A I don't know. I went down and paid for it later and that is all I know.

Q You paid for the recording of it?

A Yes sir.

Q As I understand your testimony, Mr. Aitken never had any interest in this placer claim at all?

A None whatever.

Q And he hasn't now?

A He hasn't now.

Q You stated to Mr. Roth this forenoon in cross-examination, as I have it, that you based your discovery—you based your location of the quartz claim on the fact that the vein upon which you located was commonly known as a 'known vein'. Explain what you mean by that.

A After Mr. Campbell and Mr. Tobin discovered it there.

Q You mean it was well known—it became well known after Campbell and Tobin opened it up?

A Yes sir.

Q Had it ever been known to exist within the boundaries of your placer claim before Campbell and Tobin opened it up?

A No sir.

Q And before you located your quartz claim, you saw and examined the vein matter that had been taken out of the hole by Campbell and Tobin? Is that true?

A Yes sir.

Q You stated it was of such a character that you could tell that it came from a ledge or lode or vein in place—I don't mean a ledge—I mean a vein or lode in place. Is that true?

A Yes sir.

Q You described in your direct examination, and also in your cross examination to Mr. Roth,

that when you staked —placed the corner stakes—the four corner stakes of your quartz claim, that you designated the northwest corner as the “northwest corner” on the stake?

A Yes sir.

Q And the northeast corner as the “northeast corner” on the stake?

A Yes sir.

Q And likewise the southwest corner?

(Mr. Roth makes objection which is overruled)

Q You also stated that the southeast corner you designated by marking “southeast corner” on the stake. Is that true?

A Yes sir.

Q In answer to the next question of Mr. Roth’s you stated—the record shows you stated then that on all four corners you put the numbers, No. 1, No. 2, No.3 and No. 4. Is that your testimony? Was that intended to be your testimony?

A No sir.

Q State what the facts are.

A The facts are that I got mixed up between the placer stakes and the quartz.

Q When?

A During the testimony.

Q Which testimony?

A Mr. Roth’s cross-examination.

Q Explain what the facts are.

A The four corners of this quartz claim—(Interrupted)

Q Which quartz claim—yours?

A Yes. The southeast, northwest, and so on—are not numbered.

Q Then you were mistaken when you told Mr. Roth they were numbered?

A Yes, I got mixed up.

Q When Mr. Roth was asking you what was on stake No. 4 of your placer claim, which would be the northwest corner, you stated to him that you put on the month of July 1921. What date did you put on?

A I put on April 20th.

Q It wasn't July at all then?

A No sir.

Q Why did you say it to Mr. Roth?

A I got mixed up.

Q You were mistaken and desire to have your testimony corrected to show as April?

A Yes sir.

Q As I understood you in answer to Mr. Roth's question in cross-examination, he asked you, after going in a southwesterly direction and locating the quartz claim known as the Hillside Quartz property he asked you how far it was from your upper end line down to the lower side line—how far it was, and you said you didn't know—might be 500 ft. or 600 ft.—the lower side line of the placer—you said might be 500 ft. or 600 ft. Don't you know as a matter of fact?

(Mr. Roth makes objection and same is sustained, but Court rules that witness may state what it is.)

A About 400 ft.

Q You never measured and don't know exactly?

A It is about that.

MR STEVENS: That is all.

(Recess of 15 minutes until 3:20 P. M.)

(Testimony of Wm. Grant)

RE-CROSS EXAMINATION

BY MR. ROTH:

Q This affidavit of labor for the assessment work on that placer claim was recorded by you personally, was it not?

A No sir.

Q Well, you were there at the time it was recorded, were you not?

A No sir.

Q You were not?

A No sir.

Q Weren't you there when Mr. Grant swore to this affidavit?

A No sir.

Q Now you say you got mixed up with reference to what your testimony shows on cross-examination with reference to stakes on your quartz claim?

A Yes sir.

Q Now isn't it a fact that I asked you all about the stakes on that quartz claim before I asked you anything about the placer claim?

(Mr. Stevens makes objection which is over-ruled.)

Q Isn't that true? Isn't it a fact I started cross-examination with you, examining you about the stakes on this lode claim—Hillside Bench Lode Claim?

A I understand you started in on the placer claim.

Q Mr. Grant, what was it mixed you up on your testimony you gave with reference to the post on the quartz claim or lode claim?

A Just got mixed up.

Q You heard it stated "northwest—July 25, 1921". You certainly could not have been thinking about the placer claim?

A It don't look like it, but I don't remember—have a poor memory.

Q Isn't it a fact, now it has been called to your attention that you made a mistake, that you tried to rectify by saying you got mixed up?

A No sir.

Q That is not a fact?

A I made a mistake I told you. I made a mistake—I didn't intend to make a mistake—only a mistake I couldn't help, and not for any purpose.

Q Isn't it true, Mr. Grant, that you were instructed—you got information as to what the law was with reference to what should be on stakes and that you were charging your mind with the facts necessary to be on those stakes under the law, and that is what confused you?

(Mr. Stevens makes objection unless counsel fix the time instructions—legal instructions, he presumes—were received—whether it was before he located claim or after. Court rules that matter should be called to the witness's attention definitely.)

Q Isn't it true, Mr. Grant, that after this action was brought that you got information—I am not intending to say you got legal advice, but what I

mean to say is this—if you did not get information as to what the law was with reference to the stakes of a placer claim and a quartz claim, and what was necessary under the law to be put on those stakes, and that your effort to remember what was required to be put, under the law, on stakes on quartz and stakes on placer claims is what confused you? Isn't it true?

A No sir, that is not true.

Q Mr. Grant, isn't it true that under your testimony here with reference to what was on the stakes of your placer claim, did not have—that what was written on your placer stakes, according to your testimony here, was not contained in your notice of location which you recorded? Isn't that true?

(Mr. Stevens makes objection as improper recross-examination. Mr. Roth agrees to withdraw question.)

Q Did you get mixed up or mistaken about anything else that you testified and would like to correct?

A I might of, if I knew what it was.

MR. ROTH: That is all.

MR. STEVENS: That is all.

J. B. Quigley, called as a witness for plaintiff, after being duly sworn, testified:

DIRECT EXAMINATION

BY MR. STEVENS:

Q Please state your name.

A J. B. Quigley.

Q You are the owner of what is know as the Red Top Quartz location in the Kantishna precinct, Alaska?

A Yes sir.

Q Did you locate that quartz claim?

A I did.

Q About what time, do you know?

A I couldn't tell the exact date—think it was August or September.

Q What year?

A 1920, I think.

Q Did you make discovery of a vein or lode of rock in place prior to your location?

A I did.

Q Was it of sufficient value to justify an ordinarily prudent man to expend further time and means in the development of the property?

A I thought it was.

Q You therefore located it?

A Yes sir.

Q Did you stake the boundaries of the claim?

A I did.

Q How far did you claim along the lode up hill from your discovery shaft?

A I don't remember the distance. I measured it off.

Q You didn't claim any particular amount above on your ledge at the place of discovery—you didn't describe it that way?

A I described it that way on the discovery notice, I think.

Q How far down from the discovery shaft did you claim?

A I don't remember. I measured it with a tape.

Q How long was your claim staked—about?

A 1500 ft.

Q And approximately how wide?

A I staked it 600 ft. wide.

Q It amounted to a matter of approximately 300 ft. on either side of the center?

A Either side of the center.

Q Did you after making your discovery and marking boundaries—did you file a location certificate?

A I did.

Q Will you examine the paper I hand you? (Hands him paper) Read it over and say as near as you can—state whether it is a copy—just in a general way. That purports to be a certified copy. Is that the only certificate you filed?

A That is, as near as I can remember.

Q Did you file only one certificate?

A I did.

Q You didn't file any more than one certificate for that particular claim?

A One certificate for this claim.

MR. STEVENS: We ask that this be introduced in evidence and marked Plaintiff's Exhibit "D".

(Same is admitted in evidence and marked Plaintiff's Exhibit "D". Mr. Stevens reads it to the jury as follows:)

"No. 2932. Notice is hereby given that on the
"7th day of August 1920, I discovered a lode
"of rock in place bearing gold, silver and
"other valuable deposits which lode I named
"the Red Top Lode. Thereafter I located a
"claim thereon which is bounded and describ-

“ed as follows to-wit: Commencing at post
“No. 1 or initial post which post is blazed on
“sides facing the claim and marked corner
“post No. 1 Red Top Lode claim, thence run-
“ning 1500 feet in an northeasterly direction
“to post blazed on sides facing the claim and
“marked corner post No. 2 Red Top lode
“claim, thence running 600 feet to southeast-
“erly direction to spruce post blazed on sides
“facing the claim and marked corner post
“No. 3 Red Top Lode claim, thence running
“1500 feet in a southwesterly direction to
“spruce post blazed on sides facing the claim
“and marked corner post No. 4 Red Top Lode
“claim, thence running 600 feet in northwest-
“erly direction to initial post or place of be-
“ginning. Said claim is named the Red Top
“Lode claim and is situated on the north side
“of divide between Eureka and Friday Creeks
“and joins the northwesterly side line of the
“North Star Lode Claim, in the Kantishna
“Precinct, Alaska.

J. B. Quigley, Locator.

“Filed for record 9-15-20 at 10 A. M.

C. Herbert Wilson,
Commissioner and Recorder.

“This is to certify that the foregoing is a
“true and accurate copy of the document
“known and described as No. 2932 Volume 1
“of General Records of the Kantishna Pre-
“cinct, Territory of Alaska. In witness where-

"of I have hereunto set my hand and seal the
15th day of November 1921.

(SEAL)

C. Herbert Wilson

U. S. Commissioner and Recorder."

BY MR. STEVENS:

Q Mr. Quigley, do you know about how many feet it is, measuring along the surface of the ground between your discovery shaft and the lower end line of your Red Top Claim?

A I don't know now, but I measured it at the time.

Q Approximately—can you tell?

A No, I can't tell approximately.

Q Can you give us any idea?

A No, there is a notice at the discovery that calls for about—a certain length one way and a certain length the other way. I couldn't measure with the slope of the hill.

Q Do you think it is over 400 ft? Do you think 439 ft. would be somewhere near the distance between your discovery and the lower end line?

A It is somewhere around in that vicinity—I couldn't tell you 100 ft. either way.

Q You went down hill some distance from the discovery shaft and started a tunnel into the hill towards your discovery shaft, did you not?

A Yes sir.

Q You know where the mouth of the tunnel is?

A Yes sir.

Q There is only one mouth of the tunnel?

A Yes.

Q And you only run one tunnel in that vicinity?

A Yes I only run one tunnel you could call a tunnel.

Q State whether or not the lower end line of the Red Top Quartz claim is a considerable distance further down hill than the mouth of the tunnel.

A The lower end line is considerably lower down.

Q About how far below the mouth of the tunnel?

A I couldn't tell the distance.

Q I want it approximate. Do you think 173 ft. would be somewhere near the distance?

A I couldn't tell you more than just by looking—I don't have the least idea by measuring up.

Q It is over 100 ft?

A I would guess it would run more than 100 ft.

Q Wouldn't you say, getting it approximately, it would be somewhere between 100 ft. and 200 ft. from the mouth of the tunnel to the lower end line?

A I couldn't tell you—I never measured it.

Q You said over 100 ft?

A Well, it may be—it may be more than 100 ft. and it may be less.

Q How much less?

A I couldn't say it was less—I don't know.

Q You are certain it is over 75 ft?

A I don't know—I never measured it.

Q Well you are certain it is over 50 ft?

A Sure, I think it is over 50 ft. or 75 ft., but I don't know.

Q Coming down hill from the mouth of the tun-

nel to the end line, wherever it is, have you a center end stake?

A Yes sir.

Q Did you put any writing on the center end stake?

A Yes sir.

Q What did you write?

A I marked it the southwest center end, Red Top Lode Claim.

Q Did you put your name on it?

A Yes sir.

Q The date of location?

A Yes, I aimed to put my name, date, and name of the claim on each corner stake and on center end.

Q How about—did you have an upper center end stake?

A Yes sir.

Q As I understand, you had a stake at each four corners and a stake at the center of each end?

A Yes sir.

Q You say you had them all marked that way—designated each corner what it was?

A Yes sir.

Q Were they good substantial claim stakes?

A Yes sir.

Q Could the ground—the boundaries be traced readily from the stakes you staked?

A Yes sir.

Q And you ever since that location—you have claimed and you now claim that is a valid quartz location?

A I do.

Q And it belongs to you?

A Yes sir.

MR. STEVENS: You may take the witness.

Cross-Examination

BY MR. ROTH:

Q You say you made a discovery there?

A Yes sir.

Q How much of a discovery did you make there?

A I made several discoveries there.

Q Where are they?

A They are on line up hill from the tunnel.

Q How many?

A I think it was four holes I dug.

Q Above the tunnel?

A Yes sir.

Q Besides the tunnel?

A Besides the tunnel.

(Mr. Stevens objects on account of not being proper cross-examination it having been demonstrated that he made a valid discovery, and improper how many more he made. Objection over-ruled Exception taken and allowed.)

Q With reference to the time you made discovery in the tunnel, as you stated—when did you make discovery in those four holes—was it before you started the tunnel?

A I made discovery in the four holes before I started the tunnel—started the tunnel some time in January I think, I am not—(Interrupted)

Q Of what winter?

A Last winter. It was January or the first part of February.

Q Where were the four holes that you opened the ledge on?

(Mr. Stevens makes objection which is overruled. Exception taken and allowed.)

Q Where were they?

A Right in line—right up the hill from the tunnel.

Q How far from the tunnel?

A I couldn't state the distance—I never measured it.

Q How did they line up?

A They lined up perfect, practically—as near as I can tell.

Q With the tunnel?

A With the tunnel.

Q How deep is the tunnel?

A The last time it measured a little more than 240 ft.—250 ft.

MR. ROTH: That is all

MR STEVENS: You didn't make any discovery down hill from the mouth of your tunnel, between the mouth of the tunnel and the lower end line?

A No sir, I didn't.

MR STEVENS: That is all.

MR ROTH: That is all.

WILLIAM J. CAMPBELL, called as a witness for the plaintiff, being duly sworn testified:

Direct Examination

BY MR. STEVENS:

Q State your name.

A William J. Campbell.

Q You are one of the defendants in this case?

A Yes sir.

Q You with your co-defendant, Mr. Tobin, claim to have located a quartz claim known as the Silver King Lode Mining Claim?

A Yes sir.

Q Along about the 6th day of June 1921, is that true?

A Yes sir.

Q You filed a location notice some time after that time?

A You mean filed with the Recorder?

Q Yes.

A Mr. Tobin did.

Q What is known as the location certificate for that claim?

A Yes sir.

Q It was soon after—along about the 6th of June?

A When we filed it?

Q Yes.

A I think it was in the month of July.

Q It was within ninety days?

A Yes sir.

Q Did you see the certificate of location?

A Yes sir.

Q Before it was filed?

A Yes sir.

Q The statement made in that location with reference to the date of your discovery of a vein or quartz in place was correct, was it not?

A I think it was.

Q To refresh your memory—I can show you a copy of the certificate. The certificate, as I understand it—(Interrupted by Mr. Roth)

(Mr. Roth objects as not set up in the pleading. Court assents.)

Q The certificate may not be quite plain. It speaks of having discovered and located the claim on the 6th of June 1921. Now state what the true date of your discovery was—whether the 6th or 1st day of June—discovery of the quartz vein or lode in place.

A It was supposed to be the first day of June.

Q 1921?

A That's what Mr. Tobin told me.

Q You never made discovery before that?

A I don't know for sure—cannot swear to date.

MR. STEVENS: We offer in evidence certified copy of location certificate.

(Mr. Roth objects because it is a copy. Court says it may be introduced if it can be shown he has possession of the original. Mr. Stevens argues that statute says certified copies of any public document may be admitted. Mr. Roth states he delivered original and had certified copy made at time deposition was taken and that original must be with deposition now in possession of the Clerk. Original itself delivered to the notary who took deposition of Mr. Campbell at the instance of Mr. Stevens and it is here. (Indicating in Clerk's possession.) Court states hasn't had occasion to look it up. Stipulates that deposition may be published. Deposition opened but original certificates can not be found.)

MR. STEVENS: Not being able to find—not having the original, I renew my offer to introduce the certified copy in evidence.

(Mr. Roth objects to it on the ground that same is irrelevant, incompetent and immaterial at this time. It isn't a certificate of location with reference to claim of plaintiff, therefore, as far as defendants are concerned, it is irrelevant, incompetent and immaterial. Court over-rules objection and certificate is admitted as Plaintiff's Exhibit "E". Exception taken and allowed.)

(Mr. Stevens reads Plaintiff's Exhibit "E" to the jury, as follows:)

"Certified Copy. No. 3147. Notice is hereby
"given, that the undersigned, a citizen of the
"United States, having discovered at the place
"where this notice is posted on this the 6th
"day of June 1921, a vein or lode of quartz
"or other rock in place bearing gold and other
"valuable minerals, does hereby locate and
"claim the same as the Silver King Lode
"Mining Claim. The general course of the
"vein or lode as far as the same can now be
"ascertained is southwesterly and the under-
"signed hereby locates and claims the same
"1470 feet in a southerly direction and 30
"feet in a northeasterly direction from the
"point of discovery, where this notice is posted
"and a total width of 600 feet, the same being
"300 feet on each side of the said vein. This
"claim is situate on the left limit of Moose
"Creek in the Kantishna Mining and Recording

"Precinct, Alaska. Notice dated and posted this
"6th day of June 1921.

"J. L. Tobin.

"William J. Campbell

"Locators.

"Filed for record 7-7-21 at 8:35 P. M.

"C. Herbert Wilson

"Recorder.

"This is to certify that the foregoing is a
"true and accurate copy of document No.
"3147 records of the Kantishna Mining and
"Recording Precinct. In witness whereof I
"have hereunto set my hand and official seal
"this 20th day of September 1921.

"C. Herbert Wilson.

"United States Commissioner.

(SEAL) and Recorder."

MR. STEVENS: That is all, Mr. Campbell.

Cross-Examination

BY MR. ROTH:

Q You saw the original certificate of location
that was recorded?

A Yes sir.

Q Did you read it?

A Yes sir.

Q Did you see original—what became of the
original?

A I gave it to Mr. Stevens in Mack's office and
gave it back the next day.

Q Did you see copy of the original that was pre-
pared by Mr. Geoghegan?

(Mr. Stevens objects as not being proper cross-examination. Objection sustained.)

Q That original you say you gave to Mr. Richard Geoghegan—you say you gave to Mr. Stevens?

A Yes sir.

(Mr. Stevens objects account not being proper cross-examination. Court states that witness has already testified but over-rules the motion. Exception taken and allowed.)

MR. ROTH: That is all.

MR. STEVENS: That is all.

JOHN BUSIA, called as witness for the plaintiff, being duly sworn, testified:

Direct Examination

BY MR. STEVENS:

Q What is your full name?

A John Busia.

Q Do you know William Grant, the plaintiff?

A Yes.

Q Do you know Mr. Campbell, one of the defendants?

A Yes.

Q Do you know Mr. Tobin?

A Yes.

Q Do you know a man by the name of Roger Parenteau?

A Yes.

Q Do you know where Mr. Quigley's Red Top Lode Claim is?

A Yes.

Q And where Mr. Quigley's house is—where he lives?

A Yes.

Q Were you working for Mr. Quigley last summer in June or July 1921?

A Yes.

Q Did you see Mr. Campbell and Mr. Grant somewhere near Grant's tent some distance below the mouth of Quigley's tunnel one day there in June or July 1921 where some difficulty was had?

(Mr. Roth objects as irrelevant, incompetent, and immaterial. Court sustains objection. Mr. Stevens explains what he wishes to prove by this witness, and Mr. Roth withdraws his objection.)

Q Mr. Busia, state about what time it was as to the month or date that you saw this occurrence.

A I don't remember the month—just remember it was early in the morning before eight o'clock.

Q Had you had breakfast?

A No, not yet.

Q Just describe to the jury what you saw.

A I saw nothing—only saw Mr. Campbell run after Grant five or six steps and when Mr. Grant got to the tent, Mr. Campbell come back to the shaft hole.

Q After Campbell turned around and went to the shaft, he told Tobin to come on out of the hole?

A Don't say—I went back in the house.

Q How was Billy Grant traveling—running or walking?

A Where?

Q When Campbell was after him? Did he run?

A Yes, he run.

Q Into the tent?

A Yes.

Q Was Campbell running after him?

A Yes.

Q Was that all you saw?

A That was all I saw.

MR. ROTH: Campbell run five or six steps?

A Not over six.

MR. STEVENS:

Q You were subpoenaed, were you not, by the defendants in this case?

A Yes sir.

(Mr. Roth makes objection and objection is sustained.)

MR. STEVENS: That is all.

MR. ROTH: That is all.

O. M. GRANT, called as witness for the plaintiff, being duly sworn testified:

Direct Examination

BY. MR. STEVENS:

Q You may state your name.

A O. M. Grant.

Q Do you know the plaintiff in this case, William Grant?

A Yes sir.

Q Are you any relation to him?

A None whatever.

Q Have you known Mr. William Grant for some time?

A I have.

Q How long—about?

A About four or five years.

Q Are you the same Grant that is sometimes called among the boys and acquaintances "Red Grant"?

A Yes sir.

Q You are sometimes referred to as "Red Grant?"

A By a certain element.

Q Do you know Mr. Campbell, one of the defendants?

A Yes sir.

Q Do you know Mr. Tobin?

A I do, yes.

Q Are you acquainted with the ground that is covered by what is known as the Hillside Placer Location, situated above and northeasterly and adjoining the Horseshoe Mining Claim on the right limit of Moose Creek and the left limit of Friday Creek?

A Yes sir.

Q Did you perform any assessment work or annual labor for the year 1920?

A Yes sir.

Q And at what time did you perform such labor?

A On the 3rd day of Novembr 1920.

Q Did you commence about the 3rd day of November?

A I commenced on that day, yes sir.

Q I ask you to examine Defendants' Exhibit "1" and state what that is, if you know.

A That is the affidavit of labor that I performed

Q The writing is signed "O. M. Grant". Is that your signature?

A That is my signature.

Q Did you swear to that before the officer—the commissioner of the Kantishna Precinct?

A Yes sir.

Q His name who swore you is not on there. How about it?

A I don't know anything about it. I swore and left it with him.

Q For what purpose?

A For to put on record.

Q You turned it over—it was filed at the request of T. P. Aitken?

A I don't know anything about that.

Q You didn't give the Commissioner any instructions about T. P. Aitken?

A No, I did not.

Q But when you swore to it you left it there for Billy Grant to pay the recording fee and have it recorded? You didn't pay the recording fee?

A No, sir, I didn't.

Q Are you able to state how many days labor you performed on that placer claim?

A Yes sir.

Q How many?

A Twelve and one-half days.

Q What work did you do?

A I sunk nine holes.

Q What was it reasonably worth—the labor you performed, According to current wages?

A According to current wages, I got \$1.00 an

hour for what I worked.

Q Was that a reasonable value of labor at that time?

A Yes—I boarded myself.

Q Who paid you?

A Billy Grant.

Q How much?

A \$100.00.

Q About what time did you get through?

A On the 16th of November.

Q 1921?

A 1920.

Q Do you know about the location of where you did that work?

A Yes.

Q I will ask you to look at plat marked "Plaintiff's Exhibit A." Do you know where the stakes are located of the placer claim?

A Yes.

Q Have you been down at the initial post or stake?

A Yes, I have.

Q Were you present when this survey was made by Mr. Friedrich?

A Yes.

Q During the entire time, were you?

A Not all.

Q Do you know where the initial stake is?

A Yes sir.

Q In the lower left hand corner of this map?

A Yes sir.

Q What is designated on the map as corner No. 2

—the lower right hand corner of the map. Were you ever there?

A Yes, the lower line.

Q Have you seen that stake?

A Saw it when I done assessment.

Q Going toward the top of the map from there is corner post No. 3. Have you seen that stake?

A No, I didn't go up.

Q Have you at any time since?

A No.

Q Then you weren't with Mr. Friedrich when he surveyed from that stake?

A No sir.

Q Going towards the upper left hand corner of the map, marked corner post No. 4. Have you been up there.

A Yes.

Q When were you first there?

A I was there on the 3rd when I started the assessment work.

Q November 1920?

A Yes.

Q When you went there November 3, 1920 did you know of the location and existence of what is known as Quigley's discovery shaft?

A Yes sir.

Q That shaft had been put down prior to that time, had it?

A Yes sir.

Q Do you know whether or not Quigley had started his tunnel at that time?

A There was no tunnel then.

Q Where the mouth of the tunnel now is?

A Yes.

Q Was there anything in that vicinity?

A A hole, yes.

Q Do you know how deep the hole was?

A I should judge about 8 ft.—7 ft. or 8 ft.

Q Were you down in the hole?

A No, just looking down.

Q You didn't know of any discovery in that hole at that time?

A Yes, there was some rock laying out there—some vein matter.

Q State approximately how far that was above—that is, up hill from the lower center end stake of Quigley's Red Top Quartz Claim.

A I couldn't exactly swear to it.

Q Was it between 100 ft. and 150 ft.?

A I should judge 150 ft.—less or more.

Q It is indicated on the map 173 ft. Do you think it would be somewheres near that?

A Yes.

Q When you went on the ground—the placer ground—on November 3, 1920, who went with you?

A Billy Grant.

Q Billy Grant, the plaintiff?

A Yes sir.

Q Did you at that time see what purported to be Quigley's center end stake on the lower end of Quigley's claim?

A Yes sir.

Q Did you at that time see either or both of the

corner stakes—the lower corner stakes of his end line?

A Yes sir.

Q Both of them?

A Yes sir.

Q What did you and Billy Grant do, if anything, with regard to finding a place to do this assessment?

A Billy looked around and I asked him where to go to work, and he examined and looked around and said, "Anywhere here—about 25 ft. from the line—make a hole." He went back up again and I think stepped the ground and I sank right here. (Indicating)

Q Did he use anything to measure with?

A No, I don't think so.

Q You used a shovel to measure with afterwards, didn't you?

A Yes, 25 ft. I measured down from the center end post.

Q You measured from the center end post of Quigley's straight down hill?

A No, I went 25 ft. straight down and about 7 ft. or 6 ft. up stream from the strike of the post.

Q By the 'strike of the post' you mean straight down?

A Yes.

Q You went about 6 ft.?

A 6 ft. or 7 ft.

Q Towards the up stream from Moose?

A Yes.

Q Why did you do that?

A He lined up the ledge.

Q Who?

A Billy Grant and I.

Q Did you figure the ledge dipped towards the up stream?

A He looked up at Quigley's holes—up where they were sunk—and he said about here would be in line with the ledge if it runs through here, and he said to sink on that.

Q State any and all things you and Billy spoke of with reference to where you wanted to do the work.

A After he had measured down and agreed where to sink the first hole, he says, "Sink about here, and if you find any float or indications of quartz, tell me, and try and get to bed rock and the lead of Quigley's. You may get some placer too." He said, "A little below is where I made my discovery. Sink around and you may get something if you get to bedrock." That was the substance of our talk.

Q That was the substance of about all of your talk?

A Yes sir.

Q Did you have any arrangements with Billy Grant as to what might happen in the event you should strike a quartz lead?

A None whatever. He just told me to let him know and I said yes I would.

Q You were not sinking there to find a vein that you hoped to have any interest in?

(Mr. Roth objects to question as leading and suggestive. Objection over-ruled.)

A No sir.

Q Mr. Grant, I wish you would examine the map and state to the jury, if you can, what hole it was you first put down.

A (After examining map) This hole right here. (Indicating)

Q What is that indicated as—what is it called on the map?

A Campbell and Tobin shaft.

Q Is that the hole you put down first?

A Yes sir, that one right there.

Q How deep did you put that hole down before you left it?

A 12 ft.

Q Was that the hole that you started when you started to work there about November 3rd?

A Yes sir.

Q Look just to the right of that—there is a place marked a "hole".

A Yes.

Q Did you start that hole or dig that hole?

A No sir.

Q Did you have anything to do with that hole?

A No sir, nothing whatever.

Q Have you seen that hole since it was dug?

A Yes sir.

Q When did you first see that hole?

A I saw it first on the 3rd day of June.

Q What year?

A 1921.

Q What was the appearance of the hole to the right at the time you first saw it?

A It looked as if it was newly dug.

Q In June 1921?

A Yes sir.

Q At that time what did you observe, if anything, with reference to the shaft indicated 'Campbell and Tobin shaft'?

A I saw Campbell on a windlass.

Q You saw Campbell working a windlass?

A Yes.

Q Do you know whether any one was down in the hole?

A I didn't see him, but 'hollered' down to Tobin and he answered.

Q Do you know about the time in June?

A It was the 3rd day of June.

Q State whether or not you recognized that hole at that time as being the hole you dug 12 ft. deep.

A Yes sir.

Q You said you dug nine holes altogether?

A Yes.

Q Examine the holes that are indicated and count them, and after doing so, you may state whether or not they are indicated approximately in the proper places on the map.

A (Examines map) Yes sir, they are in place.

Q There is a place there designated as "cabin."

A Yes sir.

Q What was at that place, if you know, or if anything, when you went there in November 1920?

A There wasn't anything there.

Q Was there anything there in June 1921 when you were there?

A Yes.

Q What was there then?

A No, there was nothing there then—only a tent.

Q Was there a tent there then?

A No, there was nothing.

Q Did you afterwards see a tent there?

A I couldn't be sure when I went there in June whether there was a tent. I think there was.

Q You were there after the 3rd of June, were you, and there was a tent there then?

A Yes. Wouldn't be quite sure whether there was a tent there or not.

Q Are you able to state whether this place here where the cabin is now located—is that approximately the same place that the tent was located?

A No, the tent was located further up hill.

Q About how much further up?

A About 35 ft. or 40 ft.

Q In June—the 3rd day of June 1921—when you say you examined this hole to the right, or upstream from what is indicated as Campbell and Tobin's shaft, you said it appeared to you to be a fresh hole?

A Yes.

Q Did you at that time examine any of the other holes you had dug the November before?

A No, I didn't go near them.

Q Are you a miner by occupation?

A Miner and prospector.

Q How long have you been mining and prospecting?

A About twenty five years.

Q How long have you been in Alaska?

A About twelve years.

Q And have you been engaged in prospecting and mining ever since you have been in Alaska?

A Most all the time.

Q What has been your experience in mining—has it been regarding placer or quartz locations?

A Mostly quartz.

Q Do you own any claims of your own?

A Yes sir.

Q Quartz claims?

A Yes sir.

Q In the Kantishna country?

A Kantishna District.

Q You sank other holes than these we have been talking about?

A Yes.

Q Have you had experience as a laborer in placer mines to any considerable extent?

A Yes sir.

Q You have dug a good many holes in the country?

A Yes sir.

Q You state I believe that first hole you sunk there, which you have an idea as being the same as Campbell and Tobin's shaft—why didn't you sink it further down than 12 ft.?

A It was as far as one man can throw—couldn't throw any more easily.

Q It was as far as one man could put it?

A Yes.

Q Did you have any windlass?

A No.

Q State whether or not you had any one to help you.

A No, I tried to get my partner—Billy told me to get him, but he was sheep hunting. He told me to get some one else, but I told him I didn't know of anybody.

Q Were you on the watch for some one?

A I knew all the men—some were working and some were out hunting—knewed everybody in camp.

Q After you sunk the first hole, did you sink the balance of eight holes before you left the job?

A Yes, he told me to go on and try others, and sink that hole later as he wanted to put a windlass on and get a man to go on and try to get to bed rock. He said the rest might be shallower and to look around and see if I could get to bed rock. I dug the rest all around, attempting and trying to get to bed rock.

Q Did you know of any, or see any evidence of vein or lode or rock in place within the boundaries of this placer claim at that time?

A No sir.

Q Did you know of any lode or vein within the boundaries of this placer claim at any time prior to the discovery of Campbell and Tobin in this shaft that you started?

A Nothing but Quigley's up on the hill.

Q I am asking you if you knew of any vein within the boundaries of William Grant's placer claim?

A No.

Q You don't know now whether the vein that

Campbell and Tobin discovered is the same vein that Quigley discovered or not, do you?

(Mr. Roth objects to question as leading and suggestive. Objection over-ruled. Exception taken and allowed.)

Q Do you know—can you tell—I asked if you knew whether or not the vein or lode that Campbell and Tobin discovered—whether that is the same vein that Quigley discovered?

A I don't know—I couldn't tell.

Q It has never been connected so far as you know?

A Not that I know.

Q Do you know how far the vein runs down hill from the place where Campbell and Tobin discovered it?

A How far down hill from where?

Q From Tobin and Campbell's discovery. I asked if you know how far it runs.

A No, not from his hole down.

Q As a mining man, I will ask you whether or not it is possible for any one to tell—any miner to tell, how far a vein will run without being demonstrated—without being opened up?

A It is impossible.

Session 10:00 A. M. February 4, 1922.

ALOIS FRIEDRICH, re-called by defendant for further cross-examination, being heretofore duly sworn testified:

BY MR. ROTH:

Q Mr. Friedrich, you stated that you placed this

point marked corner No. 5 at your own suggestion without instructions.

A I did.

Q You measured from what is marked corner No. 1 post, 660 ft. up to that point and set that stake?

A Yes sir.

Q You at that time were aware of Quigley's working up there?

A Yes sir.

Q Why did you not commence at corner No. 4 as marked on the plat, and mark 660 ft. or run the line off there and exclude Quigley's workings?

(Mr. Stevens objects to question as immaterial, and Court agrees.)

Q If you had commenced at corner No. 4 and marked 660 ft., and then connected that line with corner post No. 2, it would have left the claim the same size as it is now—that is, as you have it—wouldn't it?

(Mr. Stevens objects to question as immaterial. Objection over-ruled. Exception taken and allowed.)

Q If you had commenced at corner No. 4, as marked on the plat, and marked 660 ft., and set the point such as you have set at corner No. 5—set a point there, and then connected that with corner No. 2, wouldn't it have left the same area that is in this claim with the line marked from corner No. 5 to corner No. 3?

A It would not.

Q Why wouldn't it?

A Because one line is longer.

Q Which line is longer?

A From initial post to post No. 2 is 1400 ft. 8 inches, while the upper line is 1300 ft.

Q Were you aware at the time that you set that arbitrary line there that in no event under our law can a placer claim be more than 1320 ft. in length?

(Mr. Stevens objects as improper cross-examination. Objection sustained)

Q Why did you not, when you undertook to draw an arbitrary line of your own accord—why did you not take a line over on the easterly side and from there throw out the excess acreage?

(Mr. Stevens objects as improper cross-examination, also immaterial. Objection over-ruled. Exception taken and allowed.)

Q While you were trying to get the excess acreage out of the claim, why didn't you throw it out of the easterly end?

A For the simple reason that this is a much longer line—it is 136 ft. too long, and the other line is nearly 80 ft. too long.

Q You have this marked 1400 ft. You left that excess in?

A Yes.

Q Isn't it true that it was because you were trying the best you could to make measurements to get this known lode out of that placer claim?

(Mr. Stevens objects to question as assuming there was a known lode. Objection sustained.)

Q Do you say before that you didn't take your

instrument down off of this Hillside Bench Claim to the southerly?

A No, only to those corners.

Q Didn't you stake a line on down below?

A No lines whatever down below.

Q If a line was staked, you had nothing to do with it?

A I had nothing to do with it.

Q Take the northerly end of this lode claim—this Hillside Lode Claim of William Grant's—do you know where the center end stake of that Hillside Lode Claim of William Grant's was with reference to the end line of Quigley's claim?

A No sir—I would have to guess.

Q I am not talking about measurements. Was it on that line—did you take a site across from Quigley's southwest corner stake and Quigley's southeast corner stake?

A I took site, yes.

Q Where did Billy Grant's lode center upper stake come with reference to that line?

A I don't think the instrument intercepted it.

Q Which way was it?

A I think southwest, properly speaking.

Q How far?

A That I couldn't say—I couldn't intercept it with the line.

Q Take his northwesterly corner stake of this lode claim—where was it with reference to the line you sited?

A All three of those stakes are off that line slightly.

Q I know that, but I am asking which side was the northeast corner stake of the Hillside quartz claim.

A I couldn't say, I know it was off the line, but I couldn't swear whether it was to the north or south

Q Wasn't it to the north?

A I couldn't say positively, but think it was north.

Q And the other, northwest, was to the south?

A They were both off the line.

Q Wasn't the northwest off to the south a little?

A I know it wasn't square with the line.

Q In other words, did your line cross that line of Quigley's from the northeast to the southwest just a—by a small angle?

A I know it was off square, but I don't remember whether the angle was north or whether it ran in the opposite direction.

Q You know one of those stakes is north and the other south, but you don't know which one?

A I don't know which one.

MR. ROTH: That is all.

MR. STEVENS: That is all.

O. M. GRANT, re-called as witness for the Plaintiff, being heretofore duly sworn, testified:

Direct Examination, (continued.)

BY MR. STEVENS:

Q I will ask you as a mining man to state whether it is possible for any one to tell how deep—how far down a vein or lode will go without its being opened up or demonstrated?

A You can't do it.

Q State as a mining man whether or not there is any rule to go by or whether anyone can tell whether a vein will get richer as it goes down, or poorer, or whether it remains the same. Do you know or not that it can be demonstrated or can be told any way except by actual demonstration?

(Mr. Roth objects to question as immaterial, irrelevant and incompetent. Objection over-ruled. Exception taken and allowed.)

A I have no knowledge of it. I don't think any body can tell.

Q As I understand, you have had several years experience in mining in Alaska?

A I have been working at it, yes sir.

Q Mining and prospecting?

A Yes sir.

Q Do you know what the general theory among miners is as to where the placer gold comes from in this country?

A From the lode.—(Interrupted)

(Mr. Roth objects on the ground of being immaterial, irrelevant and incompetent. Objection over-ruled.)

A —The theory as far as I know is that it comes from lodes and veins in free milling.

Q You mean placer comes from quartz veins?

A Yes sir.

Q How does it come? What is the theory of how it comes from the veins?

A The theory as far as I know is by erosion and grinding down hills, separating rock—separating free milling from the lode.

Q If there is any vein or lode existing in a certain territory which is up hill from a piece of placer ground and within the same vicinity, is there any custom between placer miners that you know of in this country as to where would be the best place to prospect or sink holes to find pay streaks of placer?

A Under those quartz ledges is where I like to prospect for placer.

Q What do you mean by 'under'?

A On the down-hill side or lower level, or lower benches from where the vein is situated.

Q You mean to go down hill?

A Yes sir, right below the ledge.

Q You are familiar with this placer ground of William Grant, the Hill Bench Claim. Knowing, as you did, that Quigley had made a discovery at a higher elevation up hill from the placer claim, you may state, regardless of any hope of finding the ledge, you may state where, in your judgment, would be the the best place to prospect for placer on that placer claim at the time you and Grant went there in November 1920.

(Mr. Roth objects as irrelevant, incompetent and immaterial. Objection over-ruled.)

A Under that quartz claim.

Q Where would that be?

A That would be under the strike of the vein as near as I could get—along here. (Indicating)

Q Would that be down where hole No. 1 was?

A Yes sir.

Q When you say 'under the vein' you mean down hill from the vein?

A That is what I mean—on a lower level from the vein.

Q That would be the place to prospect for placer, regardless of the hope of finding the vein?

A That is where I like to prospect.

Q When you were doing assessment work on the plaintiff's placer claim, the Hillside Placer Claim, in November 1920, did you see the defendant Campbell around there?

A Yes sir.

Q Did Campbell see you digging those holes?

A He passed by on the road at the time and he seen me at it.

Q Did you have any conversation with Campbell during the time you were digging holes, at any place near this placer claim?

A Yes sir.

Q You may state where the conversation occurred.

A It took place down in Bartlett's tent.

Q How far is that from the placer claim?

A It might be 600 ft.—maybe more or less.

Q In that same vicinity?

A Yes sir.

Q Was that in the month of November 1920 while you were digging holes?

A Yes sir.

Q What, if anything, did Campbell say regarding the placer claim or your work?

A I was down at the tent eating lunch at the noon hour. Mr. Campbell was there with a load of meat with Billy Grant's horses, going up to the mine.

Q Which mine?

A Aitken's mine. And he says, "What are you doing down here?"

Q Campbell said to you?

A Yes. I said, "Why, I am eating lunch," and he says, "you better be up doing assessment work or I will jump that claim of yours." I guess that was all the conversation.

Q Do you know what claim he referred to?

A It must have been around about the 8th, 9th or 10th of the month.

Q Do you know what claim he referred to?

A It was this claim—the one I was doing assessment work on—Billy Grant's. That is what I was working on.

Q Had he seen you working on the claim there before this conversation?

A He must have. There was another occasion before that when I helped him put a tent up—think that would be about the 6th or 7th of November 1920. He asked me if I wouldn't give him a hand to stretch the tent, and I said, "Yes, I will at noon."

Q What else?

A I said, "Yes, I will at noon if you are ready to help fix it up." The wind was blowing so you couldn't hold it down, so when I came down at noon he was almost ready and I helped him put it up and take it down, so he also knew I was coming from representing on that claim and knew I was working up there.

Q Were you on this placer ground before you went there to do assessment work?

A I walked across it.

Q You have been there several times since?

A I have been there about two or three times.

Q And how long about have you lived and worked and been around in the vicinity of the claim?

A I have been in that vicinity around and prospecting since—continuously about a year and a half. The first time I went down I didn't do much—not until spring.

Q Do you know of any prospecting work or finds in placer ground near there?

A There has been some prospects—some stringers found—little prospects.

MR. ROTH: Stringers in placer?

A Oh yes, though not anything much—I have been prospecting in both.

MR. STEVENS:

Q Do you know of any prospecting or discoveries or mining that has been going on in that vicinity in placer?

A No, I don't know of any discoveries in placer.

Q Any place in that country?

A Not around there—new discoveries I mean

Q I didn't ask for new discoveries—has anyone ever done any placer mining?

A Yes.

Q Where?

A On Friday Creek and Eureka.

Q How near is the west end of Billy Grant's placer claim down to Friday Creek?

A It might be 300 ft. more or less.

Q It is in that vicinity?

A In that vicinity.

Q Do you know whether or not Billy Grant's

placer adjoins on the westerly or northwesterly end to another placer claim?

A Yes sir.

Q And is that claim known as being on Friday Creek?

A Yes.

Q Do you know what claim that is?

A I think it is Pete Leach's. I don't know the name of it.

Q Do you know whether it is recent or old?

A I don't know that.

Q Do you know whether the mine was any good?

A Yes, I have heard say so, although I wouldn't say—it was talk around the mine.

Q Recent or years ago?

A Years ago.

Q Do you know whether or not they have ever taken out any pay gold as a matter of reputation?

A Yes, I have heard they had pay, that is, it is supposed they have had pay on Friday; in fact, I worked on it since I was there.

Q And on Moose Creek near Grant's placer claim—have they been doing any work on any of the placers?

A TenEych has been representing.

Q Dr. Sutherland has been down in that vicinity getting ready to do hydraulic work, has he not?

A Yes sir.

Q What claim, if you know?

A It is a group of claims—I don't know the numbers—opposite Eureka, the mouth of Eureka, where he is opening up.

Q How far is that, about, from this placer claim of Grant's.

A About one mile.

Q It is on the same creek?

A Yes, on the same creek—Moose Creek.

Q From your knowledge of this placer claim of Mr. Grant's—the Hillside Placer Claim—were there any known veins or lodes prior to the time Campbell and Tobin made a discovery in the hole indicated on the map as being the Campbell and Tobin shaft?

A No sir.

Q Are there any other known veins or lodes on—is there any other known vein or lode within the boundaries of the Hillside Placer Claim at this time, except the discovery of Campbell and Tobin in June 1921?

A There are not.

Q I believe you already stated you didn't reach bed rock in any of the holes you sunk in November 1920?

A 1920?

Q You didn't reach bed-rock in any of them?

A No sir.

Q Up to that time had bedrock ever been reached on this placer claim so far as you know?

A No sir, not as far as I know.

Q Do you know J. B. Quigley that made the discovery above?

A Yes sir.

Q Owner of the Red Top Claim?

A Yes sir, I believe that is the name.

Q Was Mr. Quigley down around that placer

where you did assessment work for the Hillside Placer Claim in November 1920?

A Yes sir.

Q How many times was Quigley there?

A He was there a couple of times that I know of.

Q Did he see you digging holes there and doing assessment work?

A Yes sir, he talked to me and came down to see me about business.

Q While you were digging holes?

A Yes.

Q Were you ever in Quigley's tunnel?

A Yes sir, I have been in there.

Q Before Campbell and Tobin came on the placer ground in June 1921?

A Yes.

Q What time were you in the tunnel—not the exact date—just about?

A Have been in there two or three times—had been in Quigley's tunnel the day that they were on the ground on the 3rd of June 1921—was the last time I was in.

Q How far in were you?

A About 150 ft. anyway—couldn't tell exactly.

Q You say you was on the ground there in that vicinity when Campbell and Tobin were doing work here on the placer claim of Grant's?

A When they were working in that hole.

Q What did you observe, if anything, in regard to Campbell and Tobin working?

(Mr. Stevens makes objection and same is over-ruled.)

Q Did you have any talk with Tobin or with Campbell at that time?

A Nothing more than just 'hollared' down to Tobin—I thought he was in the hole—I heard his voice—and he 'hollared' up to me.

Q Was there anything said in regard to this claim?

A No—just bidding the time of day.

Q Did you at that time recognize the hole that Tobin was in as being the same hole you had sunk down 12 ft. in November 1920?

A Yes sir.

MR. STEVENS: You may take the witness.

Cross-Examination

BY. MR. ROTH:

Q Mr. Grant, you say that in the month of November 1920 when you were doing assessment work there under the direction of William Grant that you couldn't get any one to help you to bed-rock a hole there?

A Yes sir, I said so.

Q How long did that state of affairs last—I mean the condition of labor there?

A How long did it last in waiting to get a man?

Q How soon after that could you have gotten men?

A I don't know.

Q Could you in the month of December 1920?

A I don't know.

Q Well, you knew conditions exactly in Novem-

ber. When did your knowledge on that subject cease?

(Mr. Stevens objects as improper cross-examination, as he got through with assessment work on the 16th of November. Objection over-ruled.)

Q You understand, don't you, Mr. Grant, that between the time you did the assessment work and completed the assessment work on the 16th day of November 1920, and the first day of May 1921 there was no attempt made by any one, as far as you know, to make a location on the Quigley extension lode?

(Mr. Stevens objects as not proper cross-examination, assuming this particular property is an extension of the Quigley lode, which does not appear. Mr. Roth agrees to withdraw question and put it a different way.)

Q What was the labor condition there in the month of December 1920?

(Mr. Stevens objects as immaterial, incompetent and irrelevant. Objection over-ruled. Exception taken and allowed.)

Q Did you say you tried to get your partner to help you but he was gone at that time?

A I didn't say I tried. I told Mr. Grant that my partner was not home and I couldn't get him.

Q While you were there doing this work, did you have an occasion to go to Joe Dalton's cabin?

A Not that I remember.

Q You are acquainted with Joe Dalton?

A Yes sir.

Q You know where his cabin is at the mouth of Eureka Creek?

A Yes sir.

Q Do you remember while doing work there of having a conversation with Joe Dalton in his cabin on Eureka Creek?

A I do not.

Q On or about the 9th or 10th day of November 1920 in the cabin of Joe Dalton near the mouth of Eureka Creek, in the Kantishna Recording Precinct, yourself and Joe Dalton alone being present, did not Joe Dalton ask you why you did not bottom one of those holes on the Hill Bench and pick up Quigley's lead, and did you not reply that you suggested to Billy Grant to put a windlass on and bottom it and you could get your partner, Frank Giles to help you and you would pick up that lead, and that Billy Grant said, "To hell with it, you might have to go 100 ft." and that he was not holding it for mining purposes—that he was holding it for Aitken for a warehouse site?

A I had no such conversation or don't remember of being in his house any time those days—conversation never occurred with me.

Q You say that Billy Grant paid you for your work there doing that assessment work?

A Billy Grant handed me my check.

Q Wasn't it Tom Aitken's check?

A It was on Tom Aitken. yes sir.

Q Wasn't it signed "Tom Aitken, by Wm. Grant?"

A Yes sir.

Q Now you say you were at this hole that Camp

bell and Tobin were working at on the 3rd day of November 1920?

A Not on the 3rd day of November.

Q I mean on the 3rd of June.

A Yes sir.

Q When you were there at that time, did you see a hole about 12 ft. to the easterly of the Campbell and Tobin discovery shaft?

A Yes sir.

Q What was the condition of that hole at that time?

A That hole was about between 5 ft., 6 ft., or 7 ft. deep and looked to be a fresh dug hole.

Q What was the size of that hole at the surface of the ground?

A At the surface it would be about 7 ft. long and 4½ to 5 ft. wide—the sod was cut further than where the hole started.

Q There was no sloughing?

A Yes sir, sloughing and a little water.

Q There was sloughing in it?

A Yes sir.

Q It looked like a perfectly fresh hole?

A Yes sir.

Q How deep?

A I should judge between 6 ft. and 7 ft.

Q How much water was in it?

A About half a bucket in one corner.

Q And you now swear positively that the hole that Tobin and Campbell were working in on the 3rd day of June 1921 is the same hole that you first sunk when you went on there on the 3rd day of

November before that?

A I do.

Q Now what makes you so sure about that?

A Because I know I dug that hole.

Q I ask you why you are so positively certain that this is the hole that you first started to sink?

A I am familiar with the location.

Q What makes you so positively sure that this is the same?

A We measured the hole when I started to sink it—we located it.

Q Who measured the hole?

A Billy and I—he instructed me where to sink.

Q Billy Grant measured it?

A He measured.

Q Didn't you measure?

A Yes sir.

Q Measured with a tape?

A No, with a shovel handle.

Q Didn't you measure with a shovel handle?

A Yes sir.

Q Did Billy Grant measure with a shovel?

A Yes.

Q Didn't you testify that Billy Grant didn't, but you did?

A I remember I believe I did.

Q Weren't you informed after you got off the stand—didn't Billy Grant inform you?

A No sir.

Q Nobody told you that? You swear positively nobody told you that?

A I do.

Q You, without anybody suggesting anything to you, on thinking the matter over, remembered that Billy Grant measured?

A Yes, I remember that we were both there.

Q And without anybody suggesting to you, you just corrected that in your mind?

A Yes sir.

Q Nobody suggested that you made a mistake in your testimony?

A No sir.

(Mr. Stevens enters objection but as witness had already answered, no action was taken)

Q Just how did Billy line up that ledge?

A He stood and looked up hill and lined with the holes of Quigley and said just sink there. We talked it over and thought it would be the strike of the ledge if it come through there.

Q And that is what prompted you to sink there, because he measured up with the strike of Quigley's ledge?

A The reason we wanted to sink there was if we went down and got to bedrock, it was all right.

Q The reason why you did that was on account of the strike of that ledge?

A Yes, I guess it was.

Q What else did he say to you there?

MR. STEVENS: Who?

MR. ROTH: Billy Grant.

Q He told you here about the place, and what else did he say?

A We talked about things in general—I don't remember anything further than that.

Q With reference to your instructions?

A He told me, "If you strike anything—locate the ledge—you tell me."

Q Is that all?

A Yes sir.

Q That was all he told you?

A Yes, I said, "Allright, I will tell you."

Q Were there any conditions on which you should go to bed-rock?

A No sir. He thought I would get bed-rock in a short distance.

Q How deep?

A He didn't say exactly.

Q He didn't say if you found good indications you should go on to bed-rock?

A No sir.

Q You are sure of that?

A I am. We didn't talk about it—didn't know when we would strike bed-rock.

Q Did he say how deep to go?

A No.

Q Did he say anything about a windlass there?

A No.

Q Did he say anything about getting your brother?

A My brother?

Q I mean your partner.

A No, not at that time.

Q When did he say that?

A After I had the hole as far as I could get it.

Q Didn't he say to you right at the time when

he selected the place, "If you find float, I want you to go on to bed-rock?"

A No sir.

Q I didn't get that right yesterday?

A He said after that—if I could get a man— (Interrupted)

Q Yesterday didn't you testify that when he selected the place before you started work, he told you if you found float he wanted you to go on to bed-rock?

A No.

Q That first hole you put down 12 ft. I understand?

A Yes sir.

Q Now when you got that hole down 12 ft. what did he say to you—what instructions did he give you about that hole?

A He didn't give me any instructions—only tried to get a man to go down further.

Q Did he say he would sink that hole later?

A Yes sir.

Q You said there were no men in camp?

A Yes sir.

MR. STEVENS: He didn't say there were no men in camp.

MR. ROTH: No men in camp to be hired. That is what I am talking about.

Q I understood you to say it was the custom of placer miners in this country to prospect under a lode?

A I said so, yes sir.

Q That is the first thing that a placer prospect-

or does is to go out and find a lode and prospect under that lode?

A If there is a lode, that is the theory to prospect under it, and that is what I generally try to get—on a lode throwing free milling ore.

Q I understood you to say it was the custom of placer miners in this country to prospect under a quartz lode?

A Yes sir.

Q That is the custom?

A Lots of them do it, yes—when they know it is there—if they know a ledge is throwing free milling gold—they generally do it, if they know where to go. They don't always know where to go.

Q That is where the principal placer claims in this country have been discovered?

A The very rich placer claims is under lodes.

Q How is this Hill Bench Placer located with reference to elevation as to Moose Creek?

A How do you mean—from the drop of the creek or side of the hill?

Q I am talking about the elevation of the placer claim as compared with the elevation of Moose Creek just below—just under it.

A You mean how much raise in the benches there?

Q Yes, what is the difference in elevation between this claim and the waters of Moose Creek?

A I never measured it—I couldn't tell.

Q This claim is up on the side of the hill?

A Yes sir—not on the side—partly on the side of the hill.

Q Every one of the holes is on the side of the hill?

A Partly, yes.

Q Isn't every one?

A Just on the slope of the side hill.

Q You didn't sink any holes on the bench?

A No.

Q There is some bench ground on the claim?

A Yes, below.

Q You didn't sink any holes there, did you?

A No sir.

Q Over here on the—take the easterly half of this claim—how much of the easterly half is bench?

A I guess about one-half.

Q That is the down hill?

A About one-third anyway of that is pretty flat.

Q Of the down-hill part of it?

A Yes.

Q On the southerly side of it?

A Yes.

Q You think as a placer miner that a man would be more liable to find the placer gold in paying quantities on the side of a hill above the bench, if it is under a quartz lode, than he would on the flat bench below?

A It would be out of the ledge.

Q Where he would be liable to get good ledge?

A No, if it isn't too steep to go over—right on the decomposed ledge.

Q What kind of ore was that that Quigley had there?

A I understand that it was free milling ore and galena.

Q You understand that it was galena ore?

A Yes.

Q Did you understand there was any free milling ore in it?

A Yes sir, I was informed by Jim O'Brien—he panned it out.

Q Out of this ledge?

A Yes sir.

Q You understand, do you not, that that ledge has its value principally as galena ore?

A And some stringers through and in—Interrupted)

Q You mean Quigley's vein?

A Yes.

Q The reason why it is recognized as having value is on account of the galena?

A Galena and stringers through of decomposed free milling ore.

Q I say it is considered as having value on account of the galena?

A Yes sir.

Q That is what gives it high-grade quality?

A Yes, I guess—more silver and gold.

Q You don't understand there is free milling in any quantity?

A I understand there is 20 oz.

Q 20 oz. to the ton?

A I could state easily over 20—some people say

who are familiar with it—that is what they tell—have been telling that all the time, that it is rich in gold.

Q How high did you say this placer claim is above Friday Creek?

A Well, I couldn't swear to the elevation.

Q It is a very steep hill down to Friday Creek?

A No, a flat bench and then drops off 150 ft.

Q They are low hills on the southerly end?

A No, the southerly end is not very steep—it goes on a bench and drops off in Moose.

Q I am talking about Friday.

A From the southerly end over into Friday it drops off.

Q Steep?

A Not very steep—up on side of hill about 150 to 200 ft. I should judge—rough estimation.

Q Of an elevation?

A I think about 150 ft. elevation.

Q You spoke of a conversation with Campbell there. When was this?

A Some where around the 7th, 8th or 10th. It was in the middle of my assessment work.

Q You said he was driving Billy Grant's team?

A Yes.

Q Wasn't he driving Aitken's team?

A No.

Q He was working for Aitken.

A Yes, he was working for Aitken.

Q Wasn't it Aitken's team?

A I always understood it was Billy Grant's team.

Q You always understood that?

A I had occasion to think it was.

Q He told you that you better be doing assessment work on the claim or he would jump the claim?

A Yes.

Q Did you have a claim?

A I didn't have no claim.

Q Not at all?

A I had one claim on record.

Q Where was it?

A Up on Eldorado—that's all I had.

Q At the time you did this assessment work in the month of November 1920, what work had Quigley done on that lode at that time?

A Just some prospecting holes dug on it.

Q Where were the holes?

A Right up the ridge.

Q How far from where you started your first hole was the nearest hole that Quigley had sunk at that time?

A I guess from the line it would be 160 to 170 ft.

Q From what line?

A From the upper line it would be.

MR. STEVENS: What do you mean by upper line—Quigley's lower end line?

A 170 ft. from Quigley's lower end line—probably 200 ft. from where I was digging—Quigley had a hole about 200 ft.—it might be less or more.

BY MR. ROTH:

Q From where you were working?

A From where Quigley had his first hole up hill.

Q And then he had more holes than that up hill?

A I think he had three holes further up—it was

a hill—about 600 or 700 ft. up.

Q The first hole you saw there that Quigley had you said was about 200 ft. from where you were. Would that be on the southerly side of the line between what is marked post No. 4 and post No. 3 here (Indicating map)

A Right there (Indicating on map.)

Q Was it below this line—below the upper side line of the Hillside Bench at that time?

A Below the upper side line? What do you mean by upper side line—the up Moose or down Moose—which do you mean?

Q Which do you call side lines? I am talking about the Hillside Bench placer claim and the up hill side line of that claim as it was staked at that time when you did assessment work. Was this lower hole of Quigley's below that side line of that bench claim?

A Of that placer claim?

Q Yes, of that placer claim.

A Yes, I think it was.

Q You say you saw the northeasterly corner stake of that placer claim on the 3rd day of November 1920. Is that correct?

A The northeasterly? I saw corner No. 3 post, but can not say whether it was northeast or northwest.

Q You saw the northwesterly corner post of the placer claim on November 3rd, 1920?

A Yes, I did see that post.

Q What was written on it?

A "Hill Bench" was all I made off it—it was very dim—"Hill Bench"—I looked for—looked to

find out if it was a corner of the claim.

Q That was all you could make out?

A Yes.

Q Were you ever to the northeasterly corner stake of the placer claim?

A No, I never went up to it—I saw a post of some kind.

Q When?

A The same day I was looking the posts up—on the 3rd day of November.

Q Didn't you set the post up there for him?

A No, I was never up there in my life.

Q Did he ask you to go up and set the post for him?

A He did not.

Q In one of the conversations you had with William Campbell while you were working there when Mr. Campbell was driving a team, didn't you tell Mr. Campbell that Billy Grant asked you to go up and set northwest corner stake, and you said you did set it in a draw?

A No, I never had any such conversation with Mr. Campbell.

MR. ROTH: That is all.

Re-Direct Examination

BY MR. STEVENS:

Q Mr. Roth asked if at the time you started to sink the first hole on the Hillside Bench Placer Claim in November 1920—he asked you if one of Quigley's holes was within or south of the upper

side line of the bench claim and you stated, yes you thought it was.

A Yes.

Q Did you not give that testimony referring to the line—the side line between corner No. 3 and corner post No. 4, as indicated on that map?

A Yes.

Q Do you know whether such a hole as you referred to could be as much as 96 ft. below that line—or was it, or was it not, if you know, below the line indicated on the map between corner post No. 3 and what is indicated as post No. 5?

A It is above that line.

Q Had Mr. Quigley at that time located his Red Top Claim?

A When I saw it, yes.

Q When you state that at the time you sited up there this hole was below or inside of the Hill Bench Placer Claim—do you wish to qualify by saying it was within the boundaries of Quigley's Red Top Quartz Claim?

(Mr. Roth objects as irrelevant, incompetent and immaterial. Objection over-ruled)

A Yes sir.

Q That is, that Quigley's hole you refer to was at that time within the boundaries of the Red Top Quartz Claim?

A Yes sir.

Q You stated that when you received this \$100.00 for doing assessment work from Billy Grant you received a check with Tom Aitken's name signed to the check?

A I did.

Q Do you know who wrote the check and signed Aitken's name?

A Billy Grant.

Q Was Billy Grant superintendent, or working for Tom Aitken?

A Yes sir.

Q Do you know whether or not it was Billy Grant's custom at that time to draw checks and sign Tom Aitken's name to it?

A Yes sir.

Q Mr. Roth asked you about whether or not a certain conversation was had between you and Dalton in Dalton's cabin. Was there a conversation between you and Dalton in Dalton's garden near this cabin?

A Yes sir—some distance away.

Dalton which occurred near the cabin in the garden?

Q Some conversation was had between you and (Mr. Roth objects as irrelevant, incompetent and immaterial. Objection sustained.)

MR. STEVENS: That is all.

MR. ROTH: That is all.

DAN SUTHERLAND, called as witness for the plaintiff, being duly sworn, testified:

Direct Examination:

BY MR. STEVENS:

Q State your name.

A Dan W. Sutherland.

Q Where do you reside?

A In the Kantishna.

Q Kantishna Precinct, Alaska?

A Yes sir.

Q How long have you lived there?

A About six years.

Q Had you lived in Alaska prior to that six years?

A Yes sir.

Q How long have you been in Alaska?

A Since 1907.

Q During the time you have been in Alaska what has been your business?

A Mining Principally.

Q And prospecting?

A Yes.

Q Have you had any experience as prospector or miner in placer mines?

A Yes.

Q Have you also had experience in quartz mining or prospecting?

A Some.

Q In the Kantishna country?

A Yes, and outside.

Q Do you know William Grant, the plaintiff in this case?

A Yes.

Q Do you know Mr. Campbell, one of the defendants?

A Yes.

Q Do you know Mr. Tobin?

A Yes.

Q Do you know the property in dispute, known as the Hillside placer location on the right limit of

Moose Creek and the left limit of Friday Creek in the Kantishna Precinct?

A Yes, I know of it.

Q Were you ever on the property?

A Yes.

Q Did you ever see O. M. Grant on the property—you know O. M. Grant?

A Yes. No, I never saw him on the property.

Q Did you ever go on the property with the plaintiff, William Grant?

A Yes sir.

Q About what time?

A That was around the first part of November.

Q What year?

A 1920.

Q And where did you go with reference to the placer claim?

A Down through the claim—over the claim—across the claim.

Q Did you at that time know approximately the location of a discovery shaft known as Quigley's discovery, up hill from that claim?

A Yes, I knew of some holes Quigley had above there.

Q Did you know any of the lines of Quigley's quartz location at that time?

A No, only just in a general way—knew it run up the ridge.

Q Did you see any hole or holes that had been dug there on the placer claim?

A Yes.

Q How many?

A One.

Q And how deep was it, about, if you know?

A Well, I imagine 8 ft.

Q Did you go to that hole with Mr. William Grant?

A Yes sir.

Q Do you know anything about how far the hole was from Quigley's center end stake—lower center end stake?

A No, I don't.

Q Did you see at that time, or about that time—did you see any of Quigley's lower stakes?

A No.

Q Then you don't know just where this hole was with reference to Quigley's lower end line?

A No, I couldn't say.

Q Was that one hole all the holes you saw on the placer claim?

A Yes, that was the only hole that I seen at that time.

Q Did you ever see any other holes after that time on the placer claim?

A No, have never been on that ground until late in the winter and there was quite a bit of snow then.

Q The winter of 1920?

A The following spring.

Q Spring of 1921?

A Yes.

Q You were over the ground then?

A I made a trip to the mine.

Q Did you ever examine any stakes of the

placer claim?

A No sir.

Q Did you ever make any particular examination of the surface of the ground covered by the placer location?

A No.

Q Did you see the ground at any time when Campbell and Tobin were there?

A No.

Q That was in May or June 1921? Where were you at that time?

A I was on Spruce Creek.

Q Some distance away?

A About ten or twelve miles.

Q Have you seen the property since that time?

A No, I haven't.

Q Since June 1921?

A I haven't been on it.

Q And do you know to your own knowledge, or by general reputation, whether or not any known vein or lode existed within the boundaries of the Grant placer claim prior to the time Campbell and Tobin made their discovery?

A No.

Q So far as you know, there was no known vein or lode on the ground?

(Mr. Roth enters objection. Objection overruled.)

MR. STEVENS: That is all.

Cross-Examination

BY MR. ROTH:

Q Do you mean to say there was not a discovery of valuable rock in place within the exterior boundaries of that placer claim before Tobin and Campbell sunk their discovery shaft?

(Mr. Stevens objects to question as not asking witness about anything he might know or hear of. Objection over-ruled and Court rules that witness may answer.)

Q So far as you know, you could not say that there was not a discovery of quartz in place within the exterior boundaries of that Hill Bench Placer Claim prior to the time that Campbell and Tobin made a discovery there?

A Not to my knowledge—I never heard of it and never seen it.

Q I understand you to say that you simply don't know anything about it? Is that what you are undertaking to say?

A I said I didn't know of any quartz claim there on that claim.

Q Do you know where that claim is?

A Yes.

Q Where is it?

A It is right below Quigley's location.

Q Right below Quigley's location?

A Yes sir.

Q So far as you understand, Quigley never did locate on the placer claim?

(Mr. Stevens enters objection which is sustained.)

Q What do you want to testify with reference to that. Please state it. You understood Quigley

had made a discovery of rock in place?

A Yes.

Q What do you want to be understood to say?

(Mr. Stevens makes objection and Court orders that question be made more specific.)

Q Will you tell me, if you know, where the northerly end line of the Hill Bench Placer claim is, or did you know at that time?

A Only in a general way.

Q In a general way where did you know the northerly line of the Hill Bench Placer claim was?

A I knew the northerly line to be on Friday.

Q Not by points of the compass—or the map is wrong.

A I may be wrong.

Q Take the up hill side line of that Hill Bench Placer Claim—you understand which side line I mean?

A Yes, the up hill side line.

Q Designated as the northerly—northeasterly side line—do you know where that line was?

A No, I don't.

Q Do you know where Quigley's discovery was with reference to that side line—that up hill side line of the Hill Bench Placer Claim?

A I know where Quigley's discovery holes were sunk—I don't know where the lines were at.

Q You don't know whether any of them were inside of the placer claim or not?

A I couldn't say.

MR. ROTH: That is all.

Re-Direct Examination

BY MR. STEVENS:

Q Did you know that Quigley located his claim in part at least, down hill from his discovery? The Red Top Lode Claim—did it come down in a south-westerly direction down hill?

A I couldn't say.

Q You don't know where Quigley's lines are?

A No, I do not.

MR. STEVENS: That is all.

MR. ROTH: That is all.

ROGER PARENTEAU, called as witness for the plaintiff, but not being present, the next witness was called.

WILLIAM TENEYCH, called as witness for the plaintiff, being duly sworn, testified:

Direct Examination

BY MR. STEVENS:

Q You may state your name.

A William F. TenEych.

Q Where do you live?

A Have lived in the Kantishna for the last two years.

Q Where did you live prior to that time?

A At Fairbanks and several of the camps—Ruby—Koyukuk.

Q How long, about, have you been in Alaska?

A Since 1900.

Q What is your occupation?

A Mining and Prospecting.

Q Have you had experience in mining and pros-

pecting in placer locations?

A Yes sir.

Q Have you had experience in mining or prospecting quartz locations?

A Very little.

Q Very little in quartz?

A Yes sir.

Q Has your experience covered most of the time since you have been in Alaska since 1900?

A Not altogether—worked for wages considerable in different places.

Q In mines?

A In mines and the railroad.

Q Do you know the plaintiff, William Grant?

A I do.

Q Do you know William J. Campbell, one of the defendants?

A I do.

Q Do you know Mr. Tobin?

A I do.

Q Do you know of the existence of a quartz mining location made by the plaintiff in this case, William Grant, and known as the Hillside Lode Claim, in the Kantishna Precinct, Alaska, being on the right limit of Moose Creek, near the mouth down towards Friday?

A I know where the location is.

Q Do you know where the location is in a general way of the Quigley location known as the Red Top Lode Claim?

A Yes sir.

Q Where is plaintiff's location of the Hillside

Lode Claim with reference to Quigley's Red Top?

A It is down hill and laps over the placer claim on the upper line.

Q Does the Hillside Lode Claim of the plaintiff begin at the northeasterly end at, or about, the place where the Quigley location ends?

A I don't know as I got it right.

Q Do you know about where the lower end line of the Quigley location is?

A Yes sir, I do.

Q Do you know about where the shaft is located known as the Campbell and Tobin shaft where they made a discovery?

A I know within a very small distance, but not exact feet.

Q Do you know where, about?

A I do.

Q Have you been up there?

A Yes sir.

Q When?

A On two or three different occasions last summer.

Q Did you ever see Campbell working there?

A I saw Mr. Campbell on the windlass.

Q Working on the windlass?

A Yes sir.

Q About what time?

A I couldn't say the time—it must have been—
(Interrupted)

Q In the neighborhood of June or July?

A June, I should judge.

Q Of 1921?

A Yes sir.

Q What was Campbell doing on the windlass?

A Turning the windlass.

Q Do you know whether or not where he was turning a windlass was at a hole just a short distance below Quigley's end line?

A I was out talking with Mr. Quigley and came out in front and saw them working there—in front of Quigley's house—probably 150 or 200 ft. from there.

Q When was the last time you were there?

A The last time was when Friedrich came out to chain the claim.

Q You helped Friedrich survey the ground?

A Yes sir.

Q Did you see any of the upper end stakes of Grant's quartz location?

A I did.

Q State whether or not the upper end line of Billy Grant's quartz location is about the same place, or near the same line as the lower end line of Quigley's quartz location.

A Did I say quartz location? I am referring to the placer location that I know where the stakes are.

Q Did you see any of the upper end line stakes of Billy Grant's quartz location?

A No, I didn't—I didn't pay any attention to that

Q Did you see Billy Grant's discovery stake up there somewhere?

A No sir—I didn't look at it—wasn't looking for that.

Q Were you down at a place approximately 1500 ft. below—a little less than 1500 ft. below Campbell's shaft—down in a southwesterly direction?

A Yes sir.

Q When?

A During the summer and during the time Mr. Grant staked his quartz.

Q You saw Billy Grant down there?

A I did.

Q What was he doing?

A He was setting his lower end stakes.

Q Of the quartz claim?

A Yes sir.

Q You mean the Hillside Quartz Claim?

A The claim Mr. Grant staked there. He says, "Will you witness those stakes?" I was making garden, and he says, "Will you witness those stakes?" and I said, "I will."

Q And you did witness them?

A I saw him place them.

Q Did you put your name on the stakes?

A I did not.

Q Describe what kind of stakes they were.

A They were stakes 4½ ft. as near as I can guess.

COURT: Long?

A Yes sir. And probably 2½ to 3 inches square—hewed stakes.

Q Were they squared on four sides?

A Yes sir.

Q You saw three stakes there?

A Three stakes.

Q How far were the two outside stakes—about

—from the center stake?

A I should judge 50 ft.

Q From the center stake—about?

A 25 ft.—in that neighborhood.

Q From the center to each corner stake?

A Yes sir.

Q Do you know what was written?

A I do not.

Q You didn't examine?

A No sir.

Q But you saw Billy Grant setting them there?

A I saw him set them there, and he asked me to witness them and I said, "I will." That was all that was said.

Q But the upper end stakes of that claim you never saw?

A No, I never did.

Q Mr. TenEych, do you know of any claims or claim of placer ground near the Hillside Placer Claim of Mr. Grant's?

A The ground that Sutherland is going to work joins on the lower side next to the creek, and the ground on the west side—northwest Friday side has ben .worked.

Q Is there a placer mining claim adjoining the westerly end line of the placer claim?

A I believe Pete Leech's does.

Q Does that ground also run into or down to Friday Creek—the placer that joins Grant's placer does it run down to Friday and join?

A Yes sir, It does.

Q This Leech ground—that is located on Fri-

day Creek, is it not?

A Yes sir.

Q Do you know where Grant's initial stake is?

A Yes sir.

Q How far is that initial stake of Grant's placer claim down to Friday Creek?

A I should judge about 300 ft. according to the way claims were staked—330 ft.

Q This ground on Friday Creek that joins Grant's placer claim we are talking about—has there ever been any real mining done on that claim for placer purposes?

A It is a common known fact that Friday Creek has been sluiced and there has been money taken out.

Q You say at the mouth of Friday?

A That is on Leech's ground.

Q The mouth of Friday Creek would be near Grant's initial stake?

A The first claim off Moose Creek principally would be the mouth but not the exact mouth.

Q Moose Creek or Friday?

A The first claim on Friday would be practically the mouth of Friday Creek.

Q That is the claim you speak of as joining plaintiff's claim?

A Yes sir. Of course Moose Creek claim comes up to the edge of the bench and the other claim joins it.

Q I believe you said that it was a well known fact in the community there that there had been placer workings on this creek adjoining the Hillside

Bench. Were they recent workings or a number of years ago?

A A number of years ago—before I came there.

Q You went there when first?

A I went there in July 1920.

Q That claim, as you understand it, was worked prior to that time?

A Yes sir.

Session 2:00 P. M. February 4th, 1922

WILLIAM F. TENEYCH, called as a witness for the plaintiff, being heretofore duly sworn, testified:

CROSS EXAMINATION

BY MR. ROTH:

Q This placer claim that you understand is the claim of Peter Leech on the west, at what you consider to be the true mouth of Friday Creek—that claim has not been mined since you were there?

A No sir.

Q You understand that the claim is worked out, don't you?

A Yes sir.

Q How far up on the side of the hill toward the left limit of Friday Creek was that claim worked?

A I don't think it was worked up on the bench at all—only in the creek.

Q About how high is this discovery stake of this placer claim known as the Hill Bench Placer above the water of Friday Creek—I mean the height of elevation—about?

A I should judge probably 75 or 80 ft.

Q And from that stake up to this discovery shaft

of Campbell and Tobin there is considerable elevation, is there not?

A Yes, there is.

Q Could you state about how much?

A I should judge probably 25 or 30 ft.

Q Is there a bench along on this placer claim?

A Yes sir.

Q Where is the bench on the placer?

A Below the lower side adjoining Hamilton would be, I should judge, taking in half of the claim—300 ft. an estimate.

Q Hasn't that bench itself a pretty good slope down hill?

A It has some slope.

Q And from the right limit side of the bench, speaking from Moose Creek, which would be the uphill side of the bench—from that point doesn't the hill rise steeply?

A Yes, it is more so than the other.

Q Did you see any shafts or holes sunk on the bench part of that placer claim—where any had been sunk—holes or shafts?

A I saw work where Mr. Grant did assessment work.

Q Which Mr. Grant?

A O. M. Grant.

Q You mean different holes?

A I saw several holes—don't know how many.

Q Were any of those holes on the bench part or on the hillside?

A They were up near where the supposed discovery of quartz is now.

Q And off the bench part of it?

A Right at the beginning of the bench and hill.

Q You take Moose Creek along there adjacent to this claim—is there any place along there that there has been any paying placer mines, that you know of?

A Not that I know of, no.

Q Have you had occasion to pan any of the dirt just below this Hill Bench Placer?

A Well, on the creek just below the mouth of Friday, not the mouth of Friday—but straight down from Friday Creek, I did a little assessment.

Q Did you do any excavating for yourself?

A I did.

Q Where?

A Right below the ledge.

Q How near is it to the lower center stake of that lode claim of William Grant's?

A I don't know the exact distance, but from the corner stake it would be right down I guess 250 to 300 ft.

Q What claim is it on, if any?

A I don't know the name of it—it is Hamilton's claim.

Q Is it the next claim?

A Yes sir.

Q That is known as the Horse Shoe?

A I couldn't say.

Q Where you did excavating there is practically on line under or below where you saw these holes that were sunk there as prospecting holes, was it?

A A little farther down Moose Creek.

Q Did you do any panning there?

A I did.

Q In gravel?

A I did.

Q What was the result?

A I didn't find anything.

Q You never got a color?

A I didn't get anything.

MR ROTH: That is all.

Re-Direct Examination

BY MR. STEVENS:

Q Mr. TenEych, as a prospector of placer ground in Alaska, I will ask you where, if any place, with reference to a vein or lode in the vicinity of a placer claim—where, if you know, would be the best place to prospect to find placer gold?

A If it was near a lode and I knew there was a lode, I certainly would prospect near the vein if any washed out of the lode—for getting placer.

Q Where would you go with reference to the location of the lode?

A I would go below the lode—below where I knew it was.

Q How could you get below?

A I would be down hill from the lode.

Q Upon what theory would you go down hill to find placer?

A I would go on the theory if any gold come from the lode it would naturally go down hill.

Q State, if you know, whether or not there is any recognized theory in Alaska as to where deposits of gold come from.

A I do not personally know. I know places where they have picked up a little prospect in Chandlar country.

Q Any other places?

A I notice in all our placer claims the fact that the pay streak runs straight with the creek—never follows the creek—follows in a direct line, and from that it looks to me like possibly it comes out of a ledge in a straight line—a pay streak is always in a straight line; in fact, take in the Tolovana country where the quartz or vein of quartz runs across the country, in Otter Creek there was only a few rich wash gold discoveries below that, and in the Nome country where quartz followed the direction of the creek, the pay has been longer pay streaks, and from that I always imagined that gold comes out of these quartz veins and lay in a straight line where the stream is crooked.

Q Your theory is that in the course of a long time—ages—erosion, etc. has crumbled and washed down these quartz veins, is that it?

A Yes sir, and left gold in the line where the gravel and the creek has washed out, the pay goes straight with where it comes out of the formation. That is my theory.

Q That is why you would go down where, if you know, where the lode is to find placer deposits?

A Yes sir.

MR. STEVENS: That is all.

RE-CROSS EXAMINATION

BY MR. ROTH:

Q You always go down to the bench below—you don't stop on the side of a hill expecting to get pay placer?

A I would go down, and if there was no gravel, I would go down farther.

Q You would go on the bench first?

A I most likely would.

Q You most likely would, wouldn't you?

A I would.

Q You wouldn't expect gold in paying quantities to stop on a hillside—you would expect it to stop where the first deposit was made?

A I would expect it to stop where the gravel left the hill.

MR. ROTH: That is all.

FURTHER DIRECT EXAMINATION

BY MR. STEVENS:

Q You wouldn't know whether the bed-rock would be comparatively level or whether the bed-rock would be the same way as the surface of the hill pitched?

A No.

Q You would get down under and down hill from the lode?

A If placer deposits didn't show there, you would get it on or at the edge of the hill.

MR. STEVENS: That is all.

FURTHER CROSS EXAMINATION

BY MR. ROTH:

Q You wouldn't start to sink for placer pay streak before you sunk on the bench below?

A No.

MR. ROTH: That is all.

MR. STEVENS: That is all.

ALOIS FRIEDRICH, re-called as a witness for the plaintiff, being heretofore sworn, testified:

DIRECT EXAMINATION

BY MR. STEVENS:

Q You are the same Mr. Friedrich who heretofore testified in this case?

A I am.

Q You have been sworn?

A Yes sir.

Q Did you ever have experience in prospecting and mining in Alaska?

A I have been prospecting and mining the biggest portion of twenty-four years in Alaska.

Q Do you know whether there exists among the miners in Alaska a theory upon the subject of where this placer gold comes from?

A There is a pretty well settled theory among miners, I think.

Q What is the theory?

A That it comes chiefly from the erosion of quartz leads.

Q Now as a matter of fact, what facts exist that would tend to prove that theory to be good?

A The finding of gold particles which contain quartz when separated from other gravel.

Q That would indicate that the gold came from a quartz vein or lode?

A A quartz vein or lode.

Q Any other indications that placer comes from veins or lodes?

A Sometimes the placers are very much richer immediately in the vicinity or below a lode claim where a lode or lead crosses

Q What do you mean by 'below'?

A I mean immediately down stream or down hill from a lode.

Q You say that occurs frequently?

A It occurs frequently to my knowledge.

Q And as I understand, the theory is that these veins or lodes were very much higher than they now are and they have been worn down by the effects of ages?

A By the elements, yes.

Q Applying that theory, or any other information you might have by reason of experience as a miner, if you were in possession of the knowledge that Mr. Quigley had made a discovery on a quartz ledge above—up hill from this Hillside Bench, where would you say would be the best place, or one of the best places, to prospect for placer deposits?

A Well, I would try my utmost to confine myself down hill and down stream from where that lead crosses, or was supposed to cross.

Q That is, where it crosses, if it comes down straight?

A Yes.

Q And what other advantage might you have by prospecting there for placer?

A It would likely be an enrichment, if nothing else.

Q If it does cross?

A If it does not end down stream or down hill.

Q In doing so, you have the additional advantage of striking the ledge, would you not?

A Yes, of course.

Q You have described in your former testimony about having gone to these various corners of the Hillside Placer Claim. Have you been over the surface of it?

A Of the placer claim, yes. Have been over all of it.

Q Are you able to state whether or not there was any known vein or ledge within the boundaries of that placer claim prior to the time the defendants, Campbell and Tobin, went upon the ground and made a discovery, as they claim, in June 1921?

A No, I would not state there was a known lead or lode outside of Quigley's discovery.

Q You were acquainted with the people around there, were you not?

A Yes, I am acquainted with them all—everyone in there.

Q Are you able to state whether or not there was, or was not, a known vein within the boundaries of the placer claim and outside of Quigley's.

A Not outside of Quigley's, there wasn't.

(Mr. Roth makes objection on the ground of being irrelevant, immaterial and incompetent, and wishes objection to stand before the answer. Objection overruled. Exception taken and allowed.)

Q At the present time, if you know, state whether or not there is in existence any known vein or lode within the boundaries of the Hill Bench Placer Claim, and outside of the boundaries of Quigley's claim, excepting the hole there in which Campbell and Tobin made their discovery?

A I couldn't even say as to there being a discovery in Campbell's hole—I wasn't at the bottom of it.

Q With that possible exception, is there any known vein or lode within the boundaries of the placer claim?

A No sir, not to my knowledge.

MR. STEVENS: You may take the witness.

Further Cross Examination

BY MR. ROTH:

Q Mr. Friedrich, do you claim to be an expert miner?

A No sir, I don't claim to be an expert miner.

Q Then your testimony with reference to the geology or formation of placer gold is your own individual idea?

A It is not. It is what I can learn from experts as they describe it.

Q That is only theory in substance about those placers?

A And considerable personal experience with it.

Q And you know no other theory than the one you have just mentioned?

A Yes sir, there is a theory by precipitation.

Q What do you mean 'by precipitation'?

A Gold traveling by accumulating to certain quartz.

Q Is that all?

A That is all the theories I have—or had anything to do with.

Q I understand you to say that that country is a country of erosion?

A It is a country of erosion.

Q It has been eroded very deep?

A For ages.

Q It is cut very deeply by erosion?

A Correct.

Q And in the process of erosion, I presume there are channels, that in every level as it eroded down, there were rivers and creek channels?

A Sure.

Q And in the process of erosion, those channels were washed out and put in other channels?

A Correct.

Q And those washed out and were put in other channels?

A Correct.

Q Assume one of the first channels on a higher level carried gold in its gravels that it had taken from the surrounding lodes or fissures, or what not, and its creek had eroded down into another creek—that gold I presume would go down into the next creek?

A Gold don't travel very far.

Q If the whole country erodes down, the gold would stay up?

A It would settle straight down—straight down in the next channel.

Q If it goes through a glacier period and the glacier run out, what would become of it?

A It would be carried again a little ways.

Q Gold might be laid down in a different way than simply out of the present known lodes—underneath them?

A Oh yes, if moving masses should come along and move it.

Q Supposing you did go over to this place, to be very concrete, into this Hill Bench Placer Claim, and you, with the advanced state of knowledge you have with reference to the deposits of placer gold, should undertake to locate by staking, would you go up on the side of the hill or down on the bench with the hope of locating.

A I would confine my prospecting pretty well to the bench.

Q Did you see holes sunk on the bench of the claim?

A Those holes are fairly well down on the bench

Q Is this hole that Campbell and Tobin sunk on the bench or is it on the side of the hill?

A Well, that all depends on what you call the bench.

Q What is the surveyed grade from there down hill?

A It would probably be a foot in ten.

Q No more?

A Not very much.

Q How far is it from there down to the bench proper on that claim?

A 300 feet—that is, this lower line of benches.

Q I am talking about the bench proper. I understand there is a bench along the lower part of the

Hillside Bench Claim—how far from the discovery shaft down to that bench—to the upper side of the bench?

A The bench continues pretty well up to this direction. (Indicating on map)

Q You don't understand my question. Straight down hill from the Campbell and Tobin discovery shaft how far is it to the upper edge of the bench?

A It wouldn't be over 50 ft.

Q Was there one of those, any one of those holes that was sunk down there on that bench proper?

A There were several.

Q What experience now have you had yourself about prospecting under a lode claim for placer?

A Not a great deal.

Q Did you prospect in the Kantishna country for placer?

A I did in the early days.

Q I mean in the last trip you were in—since there has been an idea that there are quartz claims there?

A Not one minute.

Q Why didn't you?

A For the simple reason I was looking for quartz claims.

Q If it would be so easy to find placer claims after quartz is located, why didn't you undertake to find placer under a quartz claim?

(Mr. Stevens objects as witness has stated he wasn't looking for placer in recent years when

he was back there. Mr. Roth agrees to withdraw question.)

Q What kind of a lode did you understand this Quigley lode to be?

A I understood it to be a good lode.

Q Of what kind of ore?

A Silver, copper and gold.

Q What is the principal, as you understand, in value of the Quigley lode?

(Mr. Stevens enters objection which is overruled.)

A It is very high in gold, according to assays.

Q How about silver?

A It is very high in silver.

Q You have a quartz claim over there?

A I have.

Q That is up Little Eldorado?

A At Eldorado.

Q Is it Little Eldorado or Eldorado?

A Eldorado.

Q Yours is silver too, isn't it?

A Exclusively.

Q Did you yourself make inquiry to ascertain whether or not this lode of Quigley's on the Red Top is rich in gold?

A If I may answer the question right, I have.

Q What did you do?

A Mr. Quigley showed me his assays.

Q What did they show?

A 16 oz. in gold and 80 oz. in silver.

Q But, say at the time that these boys located their quartz claim there the first of June last year,

1921, what did you understand the character of ore in Quigley's lode to be?

A There is no question but what it is strongest in silver.

Q That is what is known as a silver claim?

A Where it carries heavy in gold, it would be considered a gold lode.

Q Was it free gold?

A There was considerable free gold.

Q How do you know?

A Because you can pan it.

Q Did you pan it?

A No sir.

Q Did you see it panned?

A I did not.

MR. ROTH: That is all.

MR. STEVENS: That is all.

ROGER PARENTEAU, called as witness for the plaintiff, being duly sworn, testified:

Direct Examination.

BY MR. STEVENS:

Q State your name, please.

A Roger Parenteau.

Q Where do you live?

A In Fairbanks.

Q How long have you lived in Alaska—about?

A Nearly five years.

Q Are you acquainted with William Grant, the plaintiff?

A Yes sir.

Q Do you know William Campbell, one of the defendants?

A Yes.

Q Do you know Mr. Tobin?

A Yes.

Q What has been your business since you have been in Alaska?

A Mining mostly.

Q Placer mining?

A Quartz mining mostly.

Q And prospecting?

A Yes.

Q Did you know Mr. Grant in the latter part of June or July 1921?

A Yes.

Q Did you know Mr. Campbell at that time?

A Yes.

Q Did you see Mr. Grant and Mr. Campbell on the property in dispute here which is known as—part of what is known as the Hillside Placer Claim on the right limit of Moose Creek?

A When?

Q In the latter part of June or first part of July 1921?

A No, I can't say I saw Mr. Tobin around there in the first part of June.

Q Weren't you there later when Mr. Grant undertook to post up trespass notices on the ground?

A I was there in the latter part of July.

Q Was it the latter part of July? Did Grant have a tent at that time on this ground—placer ground?

A That was what I was doing—helping Mr. Grant put up the tent.

Q Do you know where Grant's cabin is now?

A I haven't been there since.

Q Well, just go ahead and state all you saw that took place in your presence in regard to Billy Grant putting up trespass notices on the ground.

(Mr. Roth objects as immaterial, incompetent and irrelevant. Objection sustained. Exception taken and allowed.)

Q Did you see defendant Campbell use any violence towards the plaintiff, William Grant, on the ground at that time?

(Mr. Roth enters objection but later withdraws same.)

Q Did you see William Grant go from the tent or thereabouts where you were putting up the tent up towards the hill a little ways on the placer claim and nail up a trespass notice?

A I did.

Q Did you see William Campbell anywhere near at that time?

A He was over on the shaft.

Q What did you do then, if anything, after the plaintiff went up to nail that notice?

A After he got through nailing up the notice I went back and got my breakfast.

Q Back into the tent?

A I was in the tent all the time.

Q You went about getting breakfast?

A I finished it.

Q It was in the morning?

A About eight o'clock.

Q What else occurred?

A While I was there I heard Mr. Grant groaning

and I went out and he was laying on the ground.

Q What did you do?

A I went over and helped him up. Mr. Campbell came running towards us and threw another rock.

Q Campbell did?

A We were both together.

Q How near did it come to hitting Grant?

A Two or three feet above his head.

Q Did it come that close to hitting you?

A Well yes, I was right close.

Q About how big was the rock?

A Maybe big as your fist.

Q How far was Campbell standing away from Grant—about?

A Maybe 40 ft.

Q What did—then what did Grant do?

A Grant run to the tent.

Q What did Campbell do?

A Campbell stopped.

Q Did Campbell run after him?

A No.

Q Did Campbell follow him up towards the tent?

A No.

Q Did Campbell come towards him before throwing the rock?

A Yes, a little ways.

Q Campbell came closer to Grant before he threw the rock?

A Yes.

Q Then what did Campbell do, if anything?

A After Grant started running to the tent—after he threw the rock?

Q Yes, what did Campbell do?

A He stopped.

Q What did he do?

A He waited.

Q How long did he wait?

A A few seconds.

Q And Grant went into the tent?

A Yes.

Q What did Campbell do, if anything?

A He stopped there.

Q How long did he stay?

A Until Grant came out.

Q What did Campbell do?

A Grant went in and got a gun, and Campbell backed up a little.

Q Then what did Campbell do when he backed up?

A He stopped.

Q How long did he stay?

A I don't know—just a few minutes.

Q Then what did he do?

A He started running towards the town.

Q Didn't he start towards the shaft where Tobin was?

A Yes, he went and 'hollared' down and told Tobin to come up, that there were two against one up here.

Q Were any words passed between Grant and Campbell that you remember of?

A No—unless the ordinary.

Q Did Campbell use any violent language at Grant at any time?

A I believe, if I remember right, Campbell said he had been throwing rocks at that notice all day until he knocked it down.

Q Had been throwing rocks at the notice—was that all he said?

A That was all he said.

Q When he threw the rock you fellows were close to the notice?

A Yes, a foot or two.

Q Were you between the notice and Campbell?

A Alongside of it.

Q Was Grant between the notice and Campbell?

A No.

Q How near was Grant to the notice?

A Two or three feet—just a few feet.

Q Then what did Grant do, if you know?

A When? After he come out?

Q Where did Grant go, if any place?

A He went down to Eureka—he said he was going to get a warrant against Campbell for hitting him with the rock.

Q Eureka is the place where the Commissioner was located—

A Yes.

Q How far is it where the Commissioner's office was to this tent—about?

A About one-and one-half or two miles.

Q You know as a matter of fact that Grant did go down to Eureka and get a warrant for the arrest of Campbell?

A Yes.

Q Do you know who arrested Campbell?

A Mr. James Burrows.

Q What were you doing there—you say you helped Grant put up the tent at that time and was getting breakfast?

A The day before we put up the tent and didn't get through with it.

Q Had you been at any time prior to that time familiar with this placer ground—the surface of it?

A I walked over it and I see some stakes, but never took particular notice of them—like anybody would seeing stakes going along.

Q Do you know whether or not there was ever a known vein—a vein or lode known to exist within the boundaries of the placer claim of Grant's—the Hillside Placer Claim—until Campbell and Tobin found this ledge at the depth of 40 ft. about?

A No, I never ever knew of one to exist.

Q The surface of the placer ground—does the bed-rock show on the surface of any part of this placer ground, as far as you know?

A Well, up in the extreme corner back of Quigley's house, northwest, there is a point of rock sticking up.

Q Is there any indication there of a vein or lode?

A No.

Q Well, state whether or not, to what extent the placer claim is covered by over-burden.

A Well, I would say—surmise—I don't know—from what I can see of the surface, most all of it is covered with over-burden.

Q In other words, you don't know of any top or apex of any lodes or veins?

A No, no apex there. At the foot of the hill anybody would look for a heavy over-burden there.

MR. STEVENS: You may take the witness.

Cross Examination

BY MR. ROTH:

Q You say there is no apex there?

A No.

Q What do you understand by apex?

A It is where a vein out-crops at the surface.

Q Unless it out-crops at the surface, there is no apex?

A Yes.

Q And still you say there was no apex there?

A Yes.

Q I understood you to say in response to Mr. Stevens that there was no apex there?

A There was no exposure there.

Q If it isn't exposed, you cannot say it is there? Do you wish to be understood to say that it wasn't there?

A I have to see things before I believe them.

Q That is the question. Because you don't see an apex, would you say there was no apex?

A No.

Q All you could say is you didn't know of any apex because you didn't see it. Is that it?

A Yes.

Q Were you in Quigley's tunnel there?

A Yes sir.

Q Was there a lode there?

A Yes.

Q Where was the up hill side line stakes of that placer claim?

A I couldn't—one stake was up on a pointed rock where the road turns going up from Friday and the other stake was up stream from that.

Q Alright, take a line between those two stakes—where was Quigley's tunnel? Was it up hill or down hill?

A Down hill.

Q You say that Campbell was arrested?

A Yes.

Q Grant swore to a complaint?

A Yes, as far as I know—I wasn't there when he swore to it.

Q Who was it arrested him?

A Jim Burrows.

Q They had a trial?

A Yes.

Q As a result of the trial Grant was put under peace bonds?

A Yes.

MR. STEVENS: What was done with Campbell—anything?

A He was fined \$100.00—but the fine was not collected if he would keep the peace.

MR. ROTH:

Q As a matter of fact, Grant was let go without giving any bond, wasn't he?

A I don't know about that.

Q Grant never gave any peace bond?

A I don't know—he settled with the Commissioner.

Q That was before Mr. Wilson, Commissioner?

A Yes.

Q The result of the trial was that Campbell was fined 100.00 and the \$100.00 part was forgotten so long as he kept the peace?

A I believe so.

Q And Grant was ordered to give a peace bond and you don't know whether he gave it or not?

A No.

Q The result was it was just a farce—Grant didn't give any peace bond and Campbell didn't pay his bond. It didn't amount to anything?

A I don't know.

MR. ROTH: That is all.

MR. STEVENS: That is all.

HARRY OWEN, called as a witness for the plaintiff, being duly sworn, testified:

Direct Examination

BY MR. STEVENS:

Q Please state your name.

A Harry Owen.

Q Where do you live?

A Well, now in Nenana at present.

Q Have you been in the Kantishna country?

A Yes sir—since last March.

Q How long have you been in Alaska?

A Since 1897.

Q You mean Alaska?

A In Alaska.

Q Were you in Dawson?

A No sir, only for about a week.

Q When did you first come to interior Alaska?

A In '98.

Q Where did you go to?

A I went on to Dawson.

Q Then were did you go?

A Came out of Dawson, on down river and got caught in the ice and had to stay in St. Michaels the winter of '98 and went up the coast prospecting—was right close to Nome when they struck there.

Q You were in the Nome country in '98?

A In '98.

Q And you have been in Alaska ever since?

A Yes.

Q What business most of the time?

A Mining.

Q Placer mining?

A Yes.

Q Any quartz mining or prospecting?

A Mostly placer.

Q Have you lived in the Tanana valley here?

A Yes.

Q Since about when?

A Had a wood contract for the Northern Commercial Company about three years in the lower Tanana.

Q Wasn't prospecting at that time?

A No sir.

Q With the exception of that time, you were prospecting and mining most of the time?

A Most of the time, yes.

Q You are not the Harry Owen, or some name similar, that was tried in this court for murder several years ago?

A I should say not.

Q Do you know of such a man?

A No, I don't know him.

Q His name was Owens or Owen—understand his name is Owen—you are not that man or any relation?

A No.

Q Do you know of the existence of any theory among mining men—placer mining men—as to where the placer gold deposits come from?

A That it came from quartz.

Q Worn down quartz?

A The wearing down of ledges—decomposition of ledges.

Q You believe to a certain extent in that theory?

A Why yes.

Q Do you know whether or not placer men, if they know of the existence of a quartz lode in the vicinity of a placer claim—do you know about where they would find the best places to prospect for placer ground?

A Yes—you mean sinking and looking around a ledge?

Q If there is a ledge or vein in the vicinity of a placer claim, where would be a good place to find placer with reference to the ledge?

A Below and about where it commences to flatten off.

Q You mean below—down hill from the vein?

A Yes.

Q Why do you say that?

A In the process of erosion the gold would be

more liable to rest on the first level, which would be natural.

Q If the vein matter was being washed down and worn away, you would be apt to find that gold down stream at a lower level, and ordinarily, the nearer you could get to the vein the more apt you would be to find it?

A Yes sir.

Q Unless it is bedrock—if bedrock wasn't so steep, it would hold it—is that true?

A Yes sir.

Q Would you say that down hill from and close to where a ledge was known, or vein was known, would be a fairly good place to prospect for placer deposits?

A I know—(Interrupted)

Q Ordinarily speaking?

A Yes, I know of where they have to hammer rock out of the gold.

Q You mean that the placer gold as you find it is attached to pieces of quartz?

A Yes.

Q And they have to pound it out?

A Yes—before the company would take it.

Q What does that indicate to you miners where gold is attached to pieces of quartz?

A That it is close to a ledge somewhere.

Q That would indicate to you that that gold came from a ledge and brought part of the quartz with it?

A That is what I believe.

Q Do you know the Side Hill—or Hillside Placer

Claim of William Grant's? Have you been on the ground?

A I have been on the ground, but I don't know much about the boundaries—have a general idea.

Q If it is true that Mr. Quigley made a discovery on a quartz lode or vein in place some 200 or 300 ft. above where Grant is said to have prospected and sunk holes in 1920, in November, the place where Grant sunk his holes being down hill from Quigley's quartz find—would you say that immediately down hill from that and as near in line with the direction of the vein as could be ascertained—would you say that would be a good place to sink in looking for placer deposits?

A If I knew Mr. Quigley's ledge carried free gold, I would.

Q But it wouldn't be a bad place even if it didn't, would it? Because a vein or lode might carry free gold at some places and some places not. Isn't that true?

A How is the question again?

Q Could you state whether or not a vein or lode should be all free milling all the way through for miles, or would it sometimes be free milling and sometimes not?

A I am not an expert on quartz. If it carried any free gold, I would look—that would be the best place to look, immediately below—or you might locate the placer claim for galena—there might be sufficient loose galena.

Q There might be deposits of silver?

A Free galena.

Q Do you know whether or not it has already been demonstrated in this vicinity that a free milling vein after you go down below the water line becomes what you call base and not free milling in the same vein?

A I don't know anything about it.

Q So far as you know, the vein might have been part free milling and part base ore. Do you know whether or not it would be possible, if veins in this country or ledges or lodes were miles high at one time and eroded and worn off—you don't know, they might have been free milling part of the time and not free milling the balance of the time?

A That is what Mr. Caps states in his report in that district.

Q Did you see Mr. Campbell or Mr. Tobin sinking the hole which is indicated on the map as being Campbell and Tobin's hole or shaft on the Hillside Bench Claim—did you see either of the defendants around that hole?

A I saw them sinking a hole, but I wouldn't recognize the hole on the plat—that is apparently near, but I couldn't swear to it—I saw them sinking a hole in June.

Q What year?

A In June last year.

Q June 1921?

A 1921—I think that was the month.

Q Do you know where Mr. Grant's cabin is there?

A No sir, I was away this summer.

Q Do you know whether that is down hill con-

siderable distance from Quigley's discovery?

A Yes.

Q Do you know whether Campbell and Tobin have more than one hole?

A No, I didn't notice—both men were working, one in the hole and one on the windlass.

Q Who was on the windlass?

A Mr. Campbell.

Q And Tobin was in the hole?

A Tobin was in the hole.

Q What time was it—about?

A Some time early in June.

Q Did you have any conversation with either of them at the time?

A Yes, I stopped at the hole and talked with them.

Q Which one?

A Mr. Campbell, and Mr. Tobin who was at the bottom of the hole.

Q What was said, if anything, by either Mr. Campbell or Mr. Tobin at that time?

A I believe I commented on the good looking ore on the dump—galena, what they had on the dump—I said, "You are getting some good looking rock." I was a stranger more or less to both of them and our remarks were general.

Q Was anything said about the placer claim at that time?

A No.

Q How deep was the hole then, if you know?

A It would be giving a guess—I understood afterwards that they were on the ledge at that time.

Q Were they down considerable distance?

A Yes.

Q Thirty or forty feet?

A Over thirty feet I would say.

Q That was all that was said at that time?

A Yes.

Q You know the community known as Eureka near this placer claim?

A Yes.

Q State whether or not you made a trip from Eureka over to the Copper Mountain country last summer.

A I did.

Q And how far is the Copper Mountain country where you went from Eureka?

A Twenty-five to twenty-eight miles.

Q How did you travel?

A Afoot.

Q About when was it?

A Some time around the middle of August.

Q 1921?

A Yes sir.

Q Who made the trip with you over there?

A Mr. Campbell.

Q William J. Campbell, the defendant?

A Yes sir.

Q What, if anything, did Mr. Campbell say to you on that trip with reference to this claim in controversy, or the hole that he and Tobin went down on and made a discovery?

A Well, the first day out we stopped at Mr. Mitchell's about half way, and didn't have much conver-

sation in regard to it. But the next day when we started, particularly in the afternoon of the second day, he spoke of his case and all the aspects in regard to the controversy with Mr. Grant—William Grant—and I mentioned to him, I said, “Bill, it looks bad enough to go on the ground, but don’t you think it hurt your case to go in that man’s hole?” He said they found it hard to sink on the ground where the spring water was bothering, but by going in an old hole, it saved them—it stood up better owing to the ice and didn’t slough in and they could get the hole down in better condition than by starting a hole to one side. By the way, I mentioned to Mr. Campbell not to tell me anything about his case that he didn’t want known—I didn’t want to be interested—I warned him not to say anything as I didn’t consider it honorable to repeat anything told in a private conversation.

Q Did he say anything to you with reference to the time he wanted to get down in the hole—that he had to cut timber if he started a new hole, and could get down quicker by going down in an old hole because the ground didn’t slough and on account of not having to timber?

A Yes sir.

Q Did he say anything about being in a hurry to get down?

A He didn’t say those words, but that was the general sense of it—he was in a hurry and didn’t want to lose time cutting timber.

Q Did he say anything with reference to Billy Grant coming from the landing?

A No.

Q Did he mention anything in talking about this hole—did he mention anything about O. M. Grant or 'Red Grant' sinking that hole?

A He said that O. M. Grant—I believe there seemed to be ill feeling—if O. M. Grant considered himself such a prospector, if he went 4 ft. deeper in the hole he would have struck float or eighteen inches to one end of the hole, he would have got float galena.

Q Did he say where they had struck any float?

A He said they had got it at that depth.

Q At what depth?

A At 4 ft. they struck the first float, and that Grant would have found the same float they found at 4 ft. more in the bottom of Grant's hole, and eighteen inches to one end of the hole they got, he said, a sample of high grade gray copper, and he says that little streak—that gray copper—was in sight almost at the top. I asked him what did he mean by streak of rock in place going to the top of the ground and he explained it was just a little red streak that came up the hill and went down into the ground about where this hole was—the hole they were working on—and that streak carried samples of high grade gray copper different to the steel galena they were getting at the bottom.

Q Did he say anything about where that float he found in the hole had come from?

A I asked him, "Do you mean to say that float you got at that depth was from your own lead?" "No" he says, "it rolled down hill or came from some

of the upper leads.”

(Recess of 10 minutes until 3:35 P. M.)

Direct Examination of Harry Owen—Continued

BY MR. STEVENS:

Q Did Mr. Campbell talk to you about this hole more than once on that trip?

A Yes sir.

Q Did he talk a good deal about this matter?

A That was the principal burden of our conversation that afternoon going up to Copper Mountain. I believe that was the only thing we discussed.

Q Did he talk a good deal about this matter or did he refer to it casually?

A He was talking all the time as we were walking along.

Q He was talking about it all the time?

A Yes sir.

Q Did he say anything on that trip at that time to you about what he thought or expected to be the result when he went on Grant's claim—what he thought Grant would do or what they expected Grant to do?

A I happened to say, “Bill, it is really too bad that you boys couldn't get together and get straight without going to law.” “Well,” he said, “We expected Grant to come and speak to us when he came back, but he never came near us. He might have come to see us if it wasn't for that redheaded ‘so and so’”—meaning O. M. Grant.

Q Did he say anything about O. M. Grant?

A He said he was at the bottom of it all, that he was the one who had prevented Billy Grant from

coming to see them.

Q What did he say about doing the right thing if Billy Grant had come to him? Did you ask him?

A Yes, I said, "What do you mean—would you have given him one-half?"—no, one-third—I don't know as he said he would give him one-third.

Q You asked him if he would have given Billy Grant one-half, and he said, "No he wouldn't have given him half, but might have given him one-third, but that Billy Grant never came to him?"

A Yes.

Q Was there anything else that Mr. Campbell said on this trip that you haven't told about?

A Oh, there was lots of things.

Q On this subject? Do you think of anything else?

A There was a lot of matter—you know when a man talks for four or five hours he says a whole lot—I couldn't tell it all.

Q Are you acquainted with this placer claim of Billy Grant's?

A I have been across it a few times.

Q Do you know whether or not the road that comes down off the hill comes across the placer claim?

A I have been up and down the road many times, but don't know whether it crosses it or not.

Q Do you know whether Tom Aitken was working some mine above this claim up hill aways?

A That is what I understand.

Q Do you know whether or not any ore was found along the road?

A Oh, yes I have picked up lots of samples along the road.

Q Do you know how they got there?

A I suppose it came loose out of sacks—one place I know of a sack half filled with ore.

Q The ore had spilled from Aitken's wagons?

A Yes.

Q You say you were not familiar with the lines—with the stakes or lines of the placer claim?

A No Sir. I have been up to Mr. Quigley's a number of times but I never paid much attention to the lines.

Q You know where Mr. Quigley's house is?

A Yes.

Q Did you know of any known vein or lode existing on or in the placer claim of Grant's prior to the time Campbell and Tobin made a discovery there?

A No.

MR. STEVENS: You may take the witness.

CROSS EXAMINATION

BY MR. ROTH:

Q You understood, however, that Quigley had made a discovery in that vicinity?

A Yes.

Q But you understood—then you say you didn't know where the boundary of the placer claim was, or couldn't say?

A No, not knowing where one line recrossed on the other.

Q And for that reason you don't know whether there was any known lode on that claim or not?

A I say I don't know where the lines were, but Mr. Quigley was working close—started his tunnel close to the line.

MR. STEVENS: Close to whose line?

A Mr. Quigley's.

MR. ROTH:

Q You didn't know where the up-hill line of the placer claim was?

A He perhaps had a stake close to where the hole was—(interrupted)

Q I am talking about the placer claim—where the up-hill side line of the placer claim was.

A Not exactly—had a general idea.

Q Did you know where any stakes were—either of the two upper end stakes?

A No.

Q For that reason you cannot say whether or not there was a discovery within the exterior boundaries of that placer claim?

A I was answering from a continuance of Mr. Quigley's tunnel, or on down hill—I was talking about the placer claim.

Q I understand you don't know where this up-hill line, or northeast line of the Hillside Bench Claim is located?

A No sir, not exactly where the line is—just a general idea.

Q With reference to your general idea of that line, of the up-hill side, of the placer claim, would you say there was a lode inside of that, or down-hill from that line?

A Ask the question again.

Q Do you know whether or not there was a lode down hill from this up-hill side line of this Hillside Bench Claim?

A No.

Q Do you know whether Quigley's tunnel was below the up-hill side line of this Hillside Bench Claim?

A No sir.

Q Did Mr. William Grant at the time over there—about the time they had this affair in the Justice Court over there, come to you for legal assistance?

A I should say not—I didn't see him.

Q William Grant?

A I didn't see him at the time.

Q Did William Grant at any time come to you about this controversy between him and Tobin and Campbell?

A No sir—there was a man came up one time where me and Mr. Broker were—Mr. Lake—and he asked me what I thought of the matter and wanted to know if I would come down, and I refused to mix in.

Q But you took very grave precautions to tell Mr. Campbell to not tell you anything on that trip to Copper Mountain? Just what was it you told him?

A He said, "There's lots of stuff I can't tell you now, or tell any one." I said, "That is alright, don't you tell anything you don't want anybody else to know." And he said there was lots of stuff not proper to tell until the proper time, and I said, "Don't tell me anything you don't want anyone to know."

Q Why didn't you want him to tell you anything?

A Because, Mr. Roth, I don't want to be mixed in with any controversy at all.

Q Did you consider that the talk you had with him was confidential?

A It was not because I was a stranger to him.

Q When did you first tell O. M. Grant about this?

A I didn't tell O. M. Grant.

Q I mean Billy Grant, the plaintiff.

A Mr. Grant came up to Copper Mountain after I was there three days, he came back with some papers from Fairbanks, and when he was present in the tent eating dinner, himself and Mr. Broker, Mr. Giles, and Mr. O. M. Grant—Mr. Billy Grant, were present and we were discussing the case—all talking about it, and somebody says, "He is now denying going in the hole." I said he told me and another man said he told him that he went in the hole—said he had gone in—he told him the same thing.

Q When did you first tell him in detail what you have related here?

A In Fairbanks here.

Q Never before?

A No sir.

Q That was after the suit was brought, as a matter of fact?

A Yes it was—the case was to come on.

Q As a matter of fact, at the time you and Campbell made this trip to Copper Mountain this suit had already been brought?

A We had no way of knowing.

Q You knew Billy Grant had come to Fairbanks?

A I heard he had gone—never met him but for ten minutes conversation at Eureka.

Q You went to this shaft of Campbell and Tobin about what day did you say?

A I believe it was some time in June—the early part of June.

Q Might it not have been in May?

A I am inclined to think in June—made first location in June—about that time.

Q Who made first location where?

A Made location up on Eldorado Creek some time in June.

Q Weren't they down about 10 ft. at this time?

A No.

Q Wasn't it true that Mr. Tobin introduced you to Mr. Campbell at that time at the shaft?

A No, I 'hollered' down at him.

Q You are sure Tobin did not introduce you at this time?

A Not at this time I am speaking of.

Q Did he introduce you the first time you met Mr. Campbell?

A The first time I met Mr. Campbell, was moving a range for Mr. Broker.

Q Who introduced you to him, if any one?

A I believe Mr. Tobin.

Q And where was it?

A Somewhere in the vicinity of the ground.

Q Of that shaft?

A I don't know whether it was around the shaft—no sir.

Q Isn't it true that right there at that shaft that you—that this conversation about that hole of Billy Grant's took place in the presence of Campbell and Tobin about the 22nd of May when they were down just about 10 ft.?

A No sir.

Q About the 27th of May when they were down about 10 feet?

A No sir.

Q Well, did you at any time have a conversation on that subject with reference to Grant's hole there and what would have happened if they had sunk the hole a little deeper—what they would have found in the shape of float, in the presence of Mr. Tobin and Mr. Campbell about the 27th of May?

A What they would have found if they went deeper in the hole?

Q You related what you say Mr. Campbell told you,—

A That was going to Copper Mountain.

Q —in case O. M. Grant had sunk that hole 18 inches deeper and 4 ft. deeper.

A 18 inches longer.

Q And now isn't it true that a similar conversation to that occurred between you and William Campbell and Mr. Tobin at the discovery shaft of Campbell and Tobin in the month of May?

A Absolutely no sir—it was going to Copper Mountain—Campbell and I alone.

Q At the time you were there at this discovery

shaft—by the way—are you a detective?

A No sir.

Q You are not acting in that capacity?

A No sir.

Q When you were at this shaft here marked Campbell and Tobin's shaft on plaintiff's Exhibit "A", did you notice a hole in close proximity to that shaft?

A No.

Q Was there one?

A I didn't notice any other hole—noticed the men—I was a stranger—was carrying on conversation with them and didn't notice anything around only the ore on the dump.

Q You were acquainted with Tobin and Campbell then?

A Had met them once or twice.

Q Hadn't you and Mr. Broker driven down that road?

A Yes, we had.

Q When was that?

A Not down the road—down the creek. They were moving some stuff coming down Moose Creek.

Q Didn't you cross about the lower end of the placer claim?

A Yes.

Q When was that?

A That was on the ice in May.

Q All done in May?

A It was just before the breakup—would be about the latter part of May—middle or latter part.

Q Just about the 10th day of May?

A I think it would be.

Q When you and Mr. Tobin—Mr. Tobin had been sick with the flu?

A I don't know—he was here working when I saw him.

Q When you come down here along the lower line of the Hillside Bench Claim about the 10th of May, isn't it true that you sited up over the holes that Quigley had sunk on the hill above there and that you stopped and said, "Right here is about where that lode passes."

A No sir, that was the first time I was on the claim and I didn't know who Mr. Quigley was at that particular time—the first time I was on the ground.

Q Isn't it true that Mr. Broker at that time made—said something to you in pursuance of that conversation?

A No sir, Mr. Broker took me down that time to help store a range and at the same time introduce me to the neighbors.

Q You knew about Quigley's discovery there?

A I went in there a perfect stranger—I don't even hardly know where Quigley's house is.

Q You knew about Quigley's discovery?

A I knew Mr. Quigley had a claim.

Q Yes—when you went by there you knew where Quigley's claim was?

A It was pointed to me off in the distance.

Q There was a line of holes at that time when you and Broker went along the lower side line of the placer claim?

A We went there to move a range and confined

ourselves strictly to moving the range.

Q When you went by, didn't you say—when in line with the holes of Quigley's—didn't you say, "Right here is where that lode crosses."

A I couldn't have been half a mile up the creek and said that—I said nothing about it at all.

Q You were doing a lot of 'pumping' of Campbell at that time?

A It took us a day and a half to go up.

Q To 'pump' it out of him?

A It was mere accident that we were together.

Q It took about a day and a half and afterwards you found out he knew you were 'pumping' him and he filled you proper?

A Myself and Mr. Broker made it up between ourselves to stay away from the case entirely—we didn't want to be thrown in the controversy—it was mere accident him accompanying me to Copper Mountain. I stated I was going—arranged that morning if he wanted to come—Mr. Broker and I were going up together but when Mr. Campbell started, Broker said he would remain back and get the horses, so I took a chance to travel with Campbell—had never been up there—and the first day out we thought we would make it through in one day. There was no discussion at all that first afternoon or the first morning, but the afternoon of the second day from after dinner to evening he told me all of these things I am telling, and knowing in a small community how a man may get in wrong, I asked him when he said there was a lot of stuff he didn't want to tell, I said, "Be careful and don't tell me anything

—I don't want to know." I was a stranger to him.

Q You were very reluctant about telling what he told you to anybody?

A Not a bit.

Q You were very anxious?

A No sir, but we have so little to talk about, everybody's business is everybody's, unless they want to keep it to themselves.

Q You found out afterwards that Billy Campbell filled you full proper and it made you sore? Isn't that true?

A Mr. Campbell filled me full?

Q Yes, on that trip.

A He would have to be born over to fill me full.

Q That is what you think—he would have to be born over again before he could fill you full?

A Yes sir.

Q Did you ever have a conversation with Mr. Tobin, one of the defendants in this case, about the controversy between the plaintiff in this case, William Grant, and these defendants?

A I believe we did discuss the case up on Eldorado Creek.

Q When was that?

A That was after we came back from Copper Mountain.

Q What was it you said to him there?

A I don't know.

Q Didn't you tell him Grant had come to you about—had asked your advice about what should be done?

A No sir, I said Joe Lake had come up to the

tent and asked, when that dispute first started in the spring, and that I refused to be drawn into it.

Q What else?

A I presumed that Mr. Grant had sent him—I don't know—but Lake came up and said, "I am a friend of Billy Grant's. What do you think we ought to do?"—or something like that. I didn't know what ought to be done—I refused to be drawn into it and stayed away from Eureka.

Q What else did you say to Jack Tobin, if you remember?

A We talked there for about an hour or three-quarters of an hour.

Q Didn't you advise him to compromise with Billy Grant?

A No, I might have said—and probably did—that it was too bad that those law suits had to be started, that it would be better if we could all get in and work the ground instead of having trouble.

Q You mean as a quartz claim and a placer claim?

A All get in and work with harmony together.

Q Did you ever try to get permission—to get a right to work on the lode?

A I never knew anything about the claim—went in over the ice and knew nothing about it at all.

Q What did Jack Tobin tell you when you suggested if they could get together—what did he say?

A I didn't say they could get together.

Q When you made the suggestion?

A I didn't make any suggestion. I deplored the fact of so much law-suits and litigation.

Q What did he say?

A Well, he made some general remark—I don't know the conversation—I don't remember. I said I might have said it and probably did.

Q Did you ever talk to him at all about their going into Grant's hole—did he ever talk to you about going into Grant's hole?

A No, he said nothing about it.

Q Did you afterwards go to this discovery shaft of Campbell and Tobin?

A No sir.

Q Never again?

A No sir—let me see—when I came back from Copper Mountain I went up and saw Mr. and Mrs. Quigley and passed by, but never stopped or took notice of anything—might have passed by the hole.

MR. ROTH: That is all.

Re-Direct Examination

BY MR. STEVENS:

Q This trip that you and Campbell traveled together to Copper Mountain was in August?

A Yes sir.

Q Of last year?

A Yes.

Q 1921?

A Yes.

Q Do you know where papers were served on Mr. Campbell in this suit?

A Mr. Grant and I think Mr. Clark and Broker came up to the tent—O. M. Grant's tent and Giles—

Q Where?

A At Copper Mountain. Mr. Campbell and his partner Tobin were living three-quarters of a mile below in a tent belonging to Quigley.

Q In the Copper Mountain country?

A In the Copper Mountain country, and I heard Mr. William Grant tell Mace Farrar, he said, "You are to act as marshal to serve the papers," and he gave him some papers and then Mace read it and authorized by the Court to serve papers on Campbell and Tobin, he went down to their tent—I accompanied somebody else in the party—I didn't see him serve the papers in the tent.

Q That was after you had the conversation with Mr. Campbell?

A Yes, it was the first I knew there was any trouble, any law-suit in Fairbanks.

Q When you and Campbell were on the way to Copper Mountain you didn't know this suit or any suit had been started over this ground?

A No. Mr. Campbell stated that he got a letter that Billy Grant was walking the streets of Fairbanks and hadn't got an attorney yet. He led me to believe he hadn't started any suit.

Q So far as you know, Mr. Campbell, when he told you these things on the way to Copper Mountain Campbell didn't know at that time that suit had been started?

A No sir.

Q And you saw Billy Grant, the plaintiff—(Interrupted)

A When I say he didn't know—he didn't know, by his conversation.

Q So far as you know, Campbell didn't disclose that papers had been served?

A Papers hadn't been served because Broker came up along with Grant and that was about three days after we got here.

Q After you and Campbell got there?

A Yes.

MR. STEVENS: That is all

Re-Cross Examination

BY MR. ROTH:

Q Didn't Mr. William Grant tell you on that—I mean William Campbell—tell you on that trip that he had received a letter from his sister, Mrs. James Barrack, which she sent in by John Lee?

A He stated he got a letter.

Q And in the letter didn't he tell you she told him that suit had been brought against him?

A He told me Mr. Grant was walking the streets of Fairbanks and didn't know what to do, that he was undecided just who he was going to employ or what to do—that was all he said.

Q About what day was that?

A That was three or four days before the papers were served at Copper Mountain.

MR. ROTH: That is all.

MR. STEVENS: That is all.

WILLIAM GRANT, re-called as witness on his own behalf, being heretofore duly sworn, testified:

Further Direct Examination

BY MR. STEVENS:

Q You may state whether or not you left Fairbanks and went to the Kantishna country with the injunction that the Court had granted in this case, and the appointment of Mr. Mace Farrar as special officer to serve papers on the defendants, and you took the papers he gave you into the Kantishna.

A Yes sir.

Q About how soon was that after the suit was brought—after the injunction was granted?

A Just as soon as I could make the trip.

Q How soon did you leave Fairbanks after that?

A Believe I left a day or so after—went down to Nenana and got on Mr. Black's boat and traveled with him, and then got horses and went up Copper Mountain with horses.

Q In the month of August 1921?

A Yes sir.

Q When you got to Copper Mountain was Mace Farrar in Copper Mountain?

A Yes sir.

Q Was defendant Campbell at Copper Mountain?

A I believe so—I didn't see him.

Q Was defendant Tobin at Copper Mountain?

A I heard so.

Q Did you see the witness who just testified—Mr. Harry Owen—up there?

A Yes sir.

Q What did you do with the papers relative to delivering them to Mace Farrar?

(Mr. Roth enters objection on the ground that there is no question about the service of the papers, and Court rules that if it is admitted, it is unneces-

sary to show conversation that occurred before the papers were served.)

Q Mr. Grant, I believe you stated in your former testimony in this case that after O. M. Grant had completed doing the assessment work for annual labor on your Hillside Placer Claim in November 1920, that you paid O. M. Grant \$100.00 for his labor. That is true?

A Yes sir.

Q How did you pay him?

A I paid him with one of Tom Aitken's checks.

Q Was that a check on the bank?

A A check on the First National Bank.

Q The First National Bank at Fairbanks, Alaska?

A Yes sir.

Q You wrote out the check?

A I did.

Q Whose name did you sign?

A T. P. Aitken, by Wm. Grant.

Q State whether or not at that time you were drawing checks in payment of Aitken's bills and signing Aitken's name.

A Yes, I did all that.

Q You paid all bills and signed all checks?

A Yes.

Q State whether or not you were in the habit of paying your own bills the same way.

A I was.

Q And after doing so, what would you do with reference to settling?

A We kept a set of books—had a bookkeeper there.

Q When you paid with Aitken's checks, state whether or not you would charge it to yourself as your debt.

A It was charged up to me in the book.

Q State whether or not this particular \$100.00 you paid O. M. Grant with a check you signed Aitken's name to—was that charged up against you?

(Mr. Roth enters objection on the ground that it is not the best evidence. Court rules that he must know and may testify. Exception taken and allowed.)

A Yes sir.

Q Before that time, was there any time where the bank account was in your name or some bank account was in your name and you drew checks and signed your own name?

A Yes sir.

Q And if you paid a bill for Mr. Aitken on your own signature to the check, what was done with that afterwards?

A Charged up to Mr. Aitken.

Q But at the particular time you paid this \$100.00 to O. M. Grant, you were drawing your checks by signing Aitken's name?

A Yes sir. We had a bank book then. When we didn't have a bank book we used common checks—who they were drawn out to—that was put on the checks, also on the stubs.

Q Who was keeping books?

A At that time, a gentleman named Charley Irish.

Q Wasn't George Wesch?

A Not then—last summer.

Q How long did you work for Aitken?

A I quit the last day of June 1921—and left here on the 27th day of May 1919.

Q Did you work for Aitken up to the last day of June?

A With the exception of two months taking a contract.

Q You worked for Aitken practically two years?

A Over two years.

Q Taking out a couple of months working for yourself?

A Yes.

MR. STEVENS: That is all.

Further Cross Examination

BY MR. ROTH:

Q You say some times you drew on your own account?

A Yes sir, before we got a check book.

Q You had an account in the bank in your own name all the time?

A Yes, all the time.

Q At the time you wrote this check to O. M. Grant on T. P. Aitken by yourself, you had a private account in the Bank?

A It was very small—most used up—never had settlement with Aitken until last fall.

Q You had a bank account at that time though?

A I don't believe there was \$100.00—it is in the records of the bank.

Q You ceased working for Aitken the last day of June 1921?

A Yes sir.

Q That is the time you acquired certain property from Aitken, was it?—in your settlement with Aitken?

A No—my settlement with Aitken was after that—that was when I quit work.

Q And that is when Aitken quit the country?

A He had quit the country before. I quit when I got through with the ore at the Landing—had the ore already to ship.

Q Aitken was through and this was the last work you did?

A He practically isn't through—has affairs to wind up there yet.

Q That is when you got through?

A That is when I quit.

Q At that time you acquired considerable property from him, didn't you?

A Well, I purchased the team—the horses—

Q At that time?

A —and the wagon. No, before that—before he left he turned them over.

Q Didn't you acquire some mining ground from him?

A No, I never acquired mining ground from him.

Q Where are those books that you kept at the time that you paid that check to O. M. Grant?

A The books were all turned over to the book-keeper there—he still has the books up in the Kaishna.

Q Do you know where they are now?

A No, I don't know a thing about it.

(Mr. Roth asks permission to cross examine

witness on one or two points in former testimony and there is no objection.)

Q I understand you say when you made that discovery of gold on the placer claim that you sunk three shallow holes about two feet deep?

A Two feet was the deepest—might not be two feet—eighteen inches.

Q From one to two feet?

A Yes.

Q Where—I want you to fix that place now that you took the dirt you panned as definitely as you can—how far from the side line—the present side line of the Hillside Lode Claim, that is the westerly side line of the Hillside Lode Claim—where would the point of discovery be?

A Above the cabin.

Q How far would it be from the nearest side line of the Hillside Lode Claim?

A I never measured it by the map—between the cabin and the hole—the scale is 100 ft. to one inch—

Q How far from where the cabin now stands?

A Ten to fifteen feet above.

Q Above and in front?

A Up-stream and up-hill from it.

Q Was it up-hill from the front or back?

A About the center of the cabin—up hill.

Q There is a hole marked 6 ft. deep near the cabin—that would be the place?

A Yes sir.

Q I understand you took two pans down to Friday Creek and panned them down at Friday Creek

and one of them in the bunkhouse up at the Aitken mine?

A That is, at the time the bunkhouse was a tent—at that time there was no bunkhouse.

Q You got the pan out of the assay office?

A Yes, the assay office was in Mr. Johnson's tent—in his own tent next to the bunkhouse.

Q That is where you got the pan?

A I borrowed the pan a short time before from Mr. Quigley.

Q You borrowed it from Quigley?

A We didn't have one so I borrowed it from Quigley.

Q Now that was Quigley's pan?

A Sure.

Q The fact is, you didn't have any assay office at that time?

A Johnson was doing the assay work—we called it the assay office.

Q You didn't have a bunkhouse except a tent, and you didn't have any tools there at that time?

A Yes, we had all kinds of tools.

Q At that time on September 10th?

A We were working a bunch of men.

Q September 10th, 1919?

A Yes sir, that fall they come up off the road and worked there.

Q On September 10, 1919

A Yes sir.

Q Sure?

A Yes sir.

Q You panned it, you say, in that tent?

A Yes sir.

Q What did you pan in—a tub?

A In a tub.

Q Where did you get the tub?

A Right there.

Q It belonged to Aitken's outfit?

A I believe the tub belonged to Mr. Quigley—it had been over there all summer—the cook used it.

Q All summer in 1919?

A Most of the summer.

Q What time did you get there in 1919?

A The first day of June.

Q The first day of June 1919?

A Yes sir.

Q Was it the first or second day you were over there on the ground?

A Left here the 27th day of May and up at the landing we took the horses with us—packed them over—it was either the first or second.

Q You packed your stuff over on horses—packed the tub over there?

A I told you the tub was Mrs. Quigley's—the tub was at the Landing and we didn't get it until later on.

MR. ROTH: That is all.

Further Direct Examination

BY MR. STEVENS:

Q As I understand you, the pan that you did your panning with was borrowed from Quigley some time before you did the panning?

A Yes, we borrowed it a short time after we went up there.

Q About how long before you did the panning?

A Six weeks or two months.

Q Where was the pan in the meantime?

A The pan was around the place—mostly around the tent where the assaying was done.

Q Whose place?

A Up on Mr. Aitken's place.

Q Up hill further?

A No, no, right there where the tents were on the hill.

Q Was it on your placer claim?

A No, it was up where Mr. Aitken—(interrupted)

Q Mr. Aitken had a camp up hill—not on your placer claim at all. When you talk about panning in a tub, it was up at Aitken's place?

A Yes sir.

Q You had borrowed the tub from Mr. Quigley for Aitken's outfit?

A Yes sir.

Q That is where you did the panning?

A Yes sir.

Q This gold pan you had six weeks before borrowed from Quigley—you had it at Aitken's?

A Had it there all the time.

Q I thought you referred to the tent on the placer claim.

A No.

MR. STEVENS: That is all.

Further Cross Examination

BY MR. ROTH:

Q Did you borrow the tub for the purpose of panning?

A No sir.

Q For washing clothes?

A Yes—the cook had it.

MR. ROTH: That is all.

MR. STEVENS: That is all.

Session 10:00 A. M., February 6, 1922.

MR. STEVENS: The plaintiff rests at this time.

MR. ROTH: The defendants now move for nonsuit, upon the grounds that the plaintiff has not shown the existence of a valid placer mining claim in the claim designated here at the Hillside Bench Claim, in that he has not, first, shown such a discovery as the law requires; second, that he has not marked the boundaries of his claim as the law requires; and third, has not recorded a certificate of location as the law requires. I especially at this time urge the second ground, without of course, waiving either of the other two grounds. But at this time I wish to urge upon the court and present authorities upon the proposition that the claim was not—the exterior boundaries of the claim were not marked by stakes as required by law, that the stakes did not have written upon them what the law expressly provides must be written on them in order to make the claim a valid claim, and third that the plaintiff did not place stakes as required by law.

(It is agreed to argue the matter, and the jury is excused until 11:00 A. M. during the argument.)

Session 11:00 A. M. February 6, 1922.

COURT: The motion for non-suit by defendants may be denied.

WILLIAM J. CAMPBELL, one of the defendants, called as witness in his own behalf, being duly sworn, testified:

Direct Examination

BY MR. ROTH:

Q What is your name?

A William J. Campbell.

Q Are you one of the defendants in this case?

A Yes sir.

Q Where were you during the spring and summer of 1921?

A Living at Friday Creek.

Q Where—in the Kantishna Precinct?

A Yes, in the Kantishna Mining Precinct.

Q Did you attempt to locate a lode claim during the year 1921 in the Kantishna?

A Yes sir.

Q Where was it?

A On the right hand side of Moose Creek coming down, and the left hand side of Friday.

Q Was it in proximity to any other quartz claim?

A Yes sir.

Q What?

A The Red Top.

Q Whose claim was it?

A Joe Quigley's.

Q There is a map on the wall, Mr. Campbell, who made that map?

A Jack Tobin.

Q What are Mr. Tobin's initials?

A J. L. Tobin.

Q And who else?

A And myself—together.

Q Take that blue line on there—what does that heavy straight blue line—what is it supposed to represent?

A The Hillside Bench Claim.

Q What kind of a claim is it?

A Placer claim.

Q What do those heavy red lines there represent?

A The lower one is the Silver King Lode Claim, and the upper is the Red Top Lode Claim.

Q What does that top black square represent?

A Joe Quigley's discovery hole.

Q What does that lower—sort of an ellipse—represent?

A That is Joe Quigley's tunnel.

Q What is it marked?

A Quigley's tunnel—"Q's tunnel".

Q What part of the tunnel does it represent?

A The line across there is the lode.

Q Does that represent the mouth of the tunnel?

A The mouth of the tunnel is down below a trifle—the line is where the lode starts.

Q That parallelogram which is marked "Q's cabin", what is that?

A That is Quigley's house or cabin.

Q Over here (pointing to map) is a parallelogram marked "Q's shop"—what is that?

A Quigley's blacksmith shop.

Q This line through here, marked in some kind

of color, right through the center—seemingly through the center—that goes through what is marked “Q’s tunnel”, and the same one through the Quigley discovery, as shown on that map—what is that line?

A The strike of the lead, as far as we can tell.

Q There is something marked “C & T shaft”—what is that?

A Our shaft—Tobin’s and my shaft.

Q On what claim?

A The Silver King Lode Claim.

Q Take the lines of the Hillside Bench Claim—give me the dimensions of that.

A From the southwesterly to the southeasterly stake is 1395 ft.

Q How do you know?

A Measured it.

Q When?

A On the 20th day of this month—or last month, of January 1922.

Q Who measured it?

A Joe Dalton, Jack Tobin and myself.

Q You mean your co-defendant?

A Yes—J. L. Tobin.

Q When you refer to Jack Tobin, do you always mean your co-defendant?

A Yes sir.

Q The three of you together measured it?

A Yes sir.

Q How did you measure it?

A I stood here—Mr. Tobin went out 100 ft. and drew the line—Mr. Dalton went up and stayed there

until we got there—and walked up that way all along the line.

Q From the southeasterly to the northeasterly corner is what distance?

A 105 ft.

Q What?

A 605 ft.

Q How do you know?

A Measured it.

Q The same three persons?

A Yes sir.

Q What is the character of the surface of the ground between those two stakes?

A Just a little ways—150 ft.—it is not very steep—about when we got up there had to take off snow shoes—couldn't climb it was so steep.

Q How did you measure?

A The same way as the lower line.

Q Exactly the same way?

A Yes sir.

Q Did you measure the full length of the tape?

A Excepting when we broke chain one place—just once it was real awful steep—kind of a hump, and just going over the hump we broke chain.

Q From the northeasterly corner stake to the northwesterly corner is what distance?

A 1296 ft.

Q How do you know?

A Measured it.

Q The same three persons?

A Yes sir.

Q What is the character of the surface between

those two stakes?

A Very steep side hill.

Q What is the difference between—the distance between the northwesterly and the southwesterly corner stakes?

A 778 ft.

Q How do you know?

A Measured it.

Q Who measured it?

A Joe Dalton, Mr. Tobin, my partner and myself.

Q Were all those measurements made on the same day?

A Yes sir.

Q You have on this map along this ruffled line, which you state represents the strike of the lode as nearly as you could place it—you have marked 441 ft. What does that mean?

A 441 ft. from the lower line of the Hill Bench to our shaft.

Q How do you know that?

A Measured it.

Q Who measured it?

A Joe Dalton, Mr. Tobin and myself.

Q When?

A On the 20th day of January 1922.

Q The next number I see on there is "25 ft". What does it mean?

A 25 feet?

Q It represents what?

A It represents 25 ft. from the center of the shaft to the upper line of the Silver King Lode Claim, and the lower line of the Red Top Claim.

Q The next figure I see there—or set of figures—is “165 ft.” What does that represent?

A It represents 165 ft. from the initial post—lower post of the Red Top Lode Claim and the upper post of the Silver King Lode Claim up to the lode in the tunnel—in Quigley’s tunnel.

Q The next set of figures I see there is “114 ft.” What does that represent?

A It represents 114 ft. from the lode in Quigley’s tunnel to the upper line of the Hillside Bench Claim.

Q The measurements that you made there, I will ask—state whether or not they were merely surface measurements?

A Yes sir.

Q Did you in making those measurements calculate the difference in elevation between the points measured?

A No sir.

Q Are those accurate measurements—taking into consideration the difference in elevation of the points measured?

(Mr. Stevens makes objection on the ground that witness is not qualified to state. Mr. Roth agrees to withdraw question as witness has said they were surface measurements.)

Q As surface measurements, are they accurate measurements?

A Yes sir.

(Mr. Stevens enters objection as witness has not shown himself qualified to answer question. Court states that he has shown how it was done, and overrules objection.)

Q What was the method of your measurements there—what did you measure with?

A A surveyor's tape.

Q What was the length of it?

A 100 ft.

MR. ROTH: We introduce this plat in evidence.

Cross-Examination

BY MR. STEVENS:

Q Mr. Campbell, do you know what degree of angle is in the corner here that you point out as the southwesterly corner?

A I don't understand what you mean. You mean the direction the lines run?

Q Do you know what angle this is—whether 90 degrees, or 80 degrees?

A How close it comes to being square?

Q You know a right angle is a square?

A I don't know.

Q Down at the southeasterly corner—do you know what degree that angle is? What degree is it?

A Oh, I don't know.

Q You didn't try to calculate that?

A No.

Q Is that true as to the northeast corner of this placer claim—you didn't try to calculate the degree of that angle?

A No—not any corner.

Q Nor the northwesterly?

A No.

Q Nor any other angle on this map—you paid no attention to the degrees?

A No.

Q You gave the direction as it appeared to you?

A Yes.

MR. STEVENS: There is no objection to the introduction of the map. It don't pretend to be a survey or accurate map, except as to distance.

(Court stipulates that it may be admitted, and marked Defendants' Exhibit No. 2.)

Direct Examination—Continued

BY MR. ROTH:

Q Who located, if any one, or attempted to locate what you have designated on that plat as the Silver King Lode Claim?

A Jack Tobin, my partner, and myself.

Q When did you enter upon that ground?

A When did we start to work—to sink on it?

Q No—when did you first enter on the ground?

A On the Silver King?

Q Yes, that is what I am talking about.

A We moved on there about—around the first of May.

Q Somewhere around the first of May?

A Yes.

MR. STEVENS: What year?

A 1921—last year.

BY MR. ROTH:

Q What was the first thing you did towards locating this Silver King Lode Claim—what was the first thing done?

A Mr. Tobin—he was the one done it.

Q What was it?

A Put up prospect stake.

Q When was the first time you commenced work on the claim?

A The 22nd day of May, I think.

Q What year?

A 1921.

Q On the 22nd day of May. Now, where did you do the first work that you did there?

A Right here at this shaft marked "C & T shaft."
(Indicating on map)

Q That is the Campbell and Tobin shaft?

A Yes sir.

Q What was the first thing you did there?

A Towards work?

Q Yes—that's what I am talking about.

A We drove in some bull picks and put in some powder and shot the frost out.

Q Was there any moss on the ground?

A Very little—probably 1½ inches.

Q You say you put in some bull picks—(interrupted)

A Long pieces of steel with a ring on so you can knock it out again.

Q How did you come to select that place to do that work?

A Mr. Tobin went up and got Mr. Quigley to come down and line it up with his works—he told us to sink right there—that was where the lead was.

Q Was there any other hole or the beginning of a shaft in close proximity to that place?

A Yes sir.

Q Where?

A About 12 ft. looking up Moose Creek from where we started a shaft and a little down hill—not more than a foot or two—a little down hill.

Q 12 ft. from this shaft—would it be in an easterly direction?

A In a southeasterly direction.

Q What was the condition of that shaft when you went there?

A It was full of water—had been sunk there some time before and was full of water.

Q What size was it on the surface?

A It was 6 ft. wide and probably 8 ft. long.

Q What was the condition of it?

A Plumb full of water.

Q Was there anything else about it? Was it in the condition it was in when dug?

A It had sloughed in—was sloughing in all the time.

Q How do you know it was full of water—how do you remember so distinctly?

A It was full of water—it was full.

Q Did you have occasion to do anything with reference to that?

A Only occasion was to bale water when drilling later—not right there that day—used water for drilling holes in rock. That was not at that time.

Q Was any one there with you when you started that hole besides you and Mr. Tobin?

A Joe Quigley.

Q He saw you start it?

A He saw me drive the first bull pick there.

Q Was any one else in close proximity at that time?

A John Busia was working on Quigley's dump right above us—coming out every few minutes and dumping a wheelbarrow full of rock over the dump.

Q Was any one else around there during the first day or two you were working there?

A Not the first day. The next morning Mr. Dalton was there.

Q Did you say Dr. Sutherland was there any time?

A Not until after the 8th day of May—I mean the 8th day of June.

Q You say after the 8th day of June. With reference to the 8th day of June, when did you see him first?

A It was on the 8th day of June.

Q What did you and Mr. Tobin do with reference to that shaft—tell the jury what you did.

A When we started to work, the first two days on this side of the shaft the water bothered.

Q Don't say 'on this side of the shaft.'

A We started to work there and shot out the frost the first day. The second day on the northwest corner of the shaft we struck thawed ground and it was impossible to keep the water out, so we shifted over about two feet to where the frost came up to the surface of the ground on the westerly side and sunk down there, and the third day we got ready to put the windlass on.

Q How far did the frost go down?

A About 5 ft.

Q How did you get the frost out?

A We shot it out with powder.

Q After you got through the frost, how far did you go before you put the windlass on?

A Just a foot or two.

Q How deep was it when you put the windlass on?

A Seven or eight feet.

Q And were you—how long did it take you to get the windlass and put it on?

A We had the windlass on the night of the third night—about.

Q Where did you get that windlass?

A Mr. Tobin made it.

Q Allright. From there now, describe what you did.

A We just continued to sink on down until we hit bed-rock.

Q What was the character of the ground you went through from the surface to bedrock?

A Slide rock—broken-up schist.

Q What depth did you get bedrock?

A I think about 41 feet.

Q When you got to bed-rock, did you go down in the shaft?

A No sir.

Q You never did?

A No.

Q After you got to bed-rock, what was the character of the material that came up?

A It was ore.

Q What part of that work were you doing?

A I was running the windlass.

Q Did you see the ore in Quigley's workings?

A Yes sir.

Q Just tell the jury how the ore that came out of the shaft there after you got to bed-rock compared with the ore of Quigley's.

(Mr. Stevens objects as immaterial, not tending to prove any issue in this case. Objection overruled.)

A It was just the same looking ore as Mr. Quigley had.

Q Do you know how deep you went to bed-rock?

A Just what Mr. Tobin told me.

Q How long did you work there after you got to bed-rock on that shaft?

A We worked every day up until the 6th of June 1921—steady.

Q But that doesn't answer my question. How long were you there working on the hole after you struck bed-rock?

A We worked there until served with a restraining order to get off there.

Q What day did you strike bed-rock?

A On the first day of June.

Q And worked how long steady?

A Up until the 6th day of June.

Q Then you worked six days after you struck bed-rock, at least?

A Yes sir.

Q Any after that?

A Oh, not every day—not steady.

Q Why didn't you work every day there steady?

A We had to rustle timber to put in—timbered it down 15 ft.—went and cut mining timbers—fixed up our camp—and several other things.

Q When you went there first, did anybody object to you going on there?

(Mr. Stevens enters objection on the ground that there is no contention either in the pleadings or otherwise that they went on with the consent of the plaintiff. Objection over-ruled. Exception taken and allowed.)

A No sir, no one objected.

Q Were you interfered with in any way at all before you struck bed-rock?

A No sir.

Q Were you interfered with in any way by any one before the 6th day of June?

A No sir.

Q I mean 1921.

A No sir.

Q What did you do, if anything, on the 6th day of June 1921, with reference to that claim?

A We staked it.

Q What did you do with reference to staking it?

A About 25 ft. above the shaft and a little to the west we put an initial post in there, and put in four corner posts.

Q Take the initial post—what did you put on that post?

A Mr. Tobin wrote it on. I wouldn't say for sure what was on it.

Q What kind of a post was it?

A It was a spruce post, about $4\frac{1}{2}$ ft. long and 4 inches square.

Q Where did you set the next post after you set that initial post?

A This easterly post.

Q You mean the northeasterly?

A Northeasterly.

Q What kind of a stake was that?

A A spruce post.

Q Well, just describe it.

A It was a spruce post about four inches square and four feet high.

Q Did you take it there, or was it a tree, or what?

A We took it there and tied it to Mr. Quigley's post.

Q Did you drive it in the ground?

A Yes, drove it in the ground and tied them up close together.

Q How did you put in the initial stake—what did you call that?

A Center post.

Q You called that the center post?

A Yes.

Q Was that driven into the ground?

A Yes sir.

Q Where was it with reference to Mr. Quigley's lower center post?

A It was tied on the lower side—drove in the ground, and tied to it.

Q What was the third post you put in?

A I didn't go down there—Mr. Tobin put in the stakes on the lower line and I put in two line stakes

—wasn't down there.

Q What line stake did you put in?

A You can't see the lower line stake, that is the southeast stake, from this corner.

Q From which corner?

A From the northwest corner.

Q So you put what?

A I put a line stake in.

Q What kind of a stake was that?

A A spruce post four feet high and four inches square.

Q From where you put that post in, what post if any, could you see?

A I could see the northeast corner and the southeast corner stakes.

Q You put in another line stake, where?

A On this line. (Indicating)

Q Which line?

A On the westerly.

Q Whereabouts on that line did you put that 'line stake?

A About—I think about 800 or 900 feet down hill from the northwest corner post.

Q From there what posts, if any, could you see?

A The lower stake—that would be the southwest and northwest corner posts.

Q Were you there when the northwest corner post was put in?

A I was down there afterwards.

Q I mean the northwest?

A I think I put it there myself.

Q Then you were there?

A Yes.

Q What kind of a post was that?

A It was a post about four feet long and four inches square.

Q Do you know what was written on that post?

A I wrote it on myself—"Northwest corner post. Silver King Lode Claim."

Q Was anything else put on it?

A "J. L. Tobin and William J. Campbell, Locators. 6th day of June 1922."

Q You mean 1921?

A 1921.

Q Do you know what was put on the northeast corner post?

A Mr. Tobin wrote it—I wouldn't say that I read it.

Q Was any other post put on that Silver King Lode Claim?

A One discovery post—put there on the first day of June 1921.

Q What was written there?

A "Discovered ore in place"—that day—the first day of June 1921.

Q Anything else?

A "J. L. Tobin and William J. Campbell, Discoverers."

Q Did you say "Discoverers" of "Locators"?

A "Discoverers." We didn't locate for six days after that.

Q Was that all there was on it?

A That is all that I remember of—I didn't write it myself.

Q Was there any arrows on it, or any numbers of what you claimed, or anything?

A Not on the discovery post that I recall—just discovery post is all I remember.

Q Who wrote it on there?

A Mr. Tobin.

Q At the time that you started work there on the 22nd day of May 1921, was there any—had you seen any quartz in place in a lode within the exterior boundaries of the Hill Bench Placer Claim?

(Mr. Stevens enters objection on the ground that question asks for a conclusion of law and fact, that witness would be allowed to state what he saw or where he saw it, but for him to state whether within the boundaries of the placer claim is a question calling for his conclusion and would be a conclusion of law in this case. Court rules it is one of the litigated questions and sustains objection. Mr. Roth takes exception and it is allowed.)

Q Within the exterior boundaries of the Hill Bench Claim, as marked on that map—within those lines as marked on the map—the blue lines on the map—had you on the 22nd day of May 1921 seen quartz in place in a lode?

(Mr. Stevens enters objection on the ground that question asks for conclusion of the witness as to whether it was quartz matter in place in the lode and also objects on the ground that the witness by his testimony does not even claim that the map is correct as to any of the angles, and hasn't shown himself qualified to make a map of that kind, purporting to put on angles, when he himself says it

isn't correct.) (Mr. Roth agrees to withdraw the question)

Q Mr. Campbell, I call your attention to plaintiff's Exhibit "A" and will ask you to state whether or not within the exterior boundaries of what is marked "Hillside Bench Claim" between what is marked corner posts Nos. 1, 2, 3, and 4,—if on the 22nd day of May, 1921, you had seen quartz in place in a lode.

(Mr. Stevens objects to question as calling for conclusion of the witness and says to let him show where within the boundaries there was a lode. Objection sustained. Mr. Roth takes exception and it is allowed.)

Q Take plaintiff's Exhibit "A"—I will ask you to state whether or not you can point to any place on that Exhibit "A" where prior to the 22nd day of May 1921, you had seen quartz in place in a lode.

A Yes, I think I can.

Q Go ahead and do it.

A In this tunnel marked "Q's tunnel."

Q How far in that tunnel?

A From where Mr. Quigley showed me it started, as far back as it run.

Q How far back did the tunnel run?

A In the hill probably 120 ft. at that time—about that.

Q Mr. Campbell, I will ask you to state, if you know, how many places quartz in place had been discovered on that lode before you started to work on the 22nd day of May 1921.

(Mr. Stevens objects to counsel's assumption—first, in asking for conclusion of witness; second as—

sumption, by saying 'on that lode' referring to the Campbell and Tobin location—that it is the same lode. Court states that it is understood that inquiry was about the lode on Quigley's location. Mr. Roth says that is what he is talking about and agrees to ask the question over again.)

Q How many places, if you know, on the 22nd day of May, 1921, was the Quigley lode exposed?

A Five different places.

Q Where?

A At the discovery post, at his tunnel, and (six different places, I meant to say)—at his discovery post, at his tunnel, and four holes between those two points.

Q Was it four holes between?

A Yes sir.

Q Was that Quigley lode at that time, if you know, a well known lode?

(Mr. Stevens objects to question as asking for a conclusion. Court states that witness may answer, and over-rules objection)

A Yes sir.

Q Did you during the month of May 1921, go to Roosevelt?

A Yes sir.

Q When?

A I went on the 11th day of May.

Q Did anyone go with you?

A Mr. TenEych went down the same day.

Q The witness on the stand here?

A Yes sir.

Q What was your business at Roosevelt at that time?

A I took Tom Aitken's team down there.

Q From whom did you get that team?

A The last time I had it—from George Wesch and Mr. Grant.

Q How did you come to get it the last time?

A I went down to Roosevelt after them to haul timbers.

Q With whom did you make arrangements to get the team?

A I made arrangements first with Tom Aitken.

Q Explain it.

A I had the team all winter hauling timber for Tom Aitken. When he decided he was going to quit, he tried to sell me the horses, but I couldn't see where I could buy them at that time as I only figured I had twenty days or a month's work to do, but I would hire them. He told me to do anything with them to earn their feed until grass come, and I worked them up until such time as Mr. Grant took them away from me to move some stuff down from Aitken's mine up at Eureka Creek, and he told me when he got through—(interrupted)

Q Who told you?

A Mr. Grant and George Wesch—when he got through I could come down there and get them and finish my work, and after—shortly after that—we had a snow storm and I didn't go down after them for quite a little while, until the roads got so I could go.

Q When was that?

A I think it was somewhere around the 22nd of April—the 21st or 22nd of April.

Q Where did you get them?

A I got them at Roosevelt.

Q Whose horses were they then?

A Tom Aitken's.

Q When you took the horses back—you say you went back there on the 11th day of May and took the horses back?

A Yes sir.

Q What condition were they in when you took them back?

A First-class condition.

Q Had you starved them?

A No sir.

Q Are you familiar with horses?

A Yes sir—we called them 'Cayooses'—they wasn't horses.

Q When you got them over to Roosevelt, how long did you stay there?

A When I went over after them?

Q No, when you took them back.

A I got over there about six in the evening and left at nine the next morning—shortly before nine.

Q Where did you stay when there?

A Stayed in Aitken's cabin.

Q Who were there?

A George Wesch and William Grant—they slept in the cabin and myself.

Q Where did you sleep?

A On the floor.

Q Where did you eat when there?

A Ate at George Wesch's.

Q With George Wesch?

A Yes sir.

Q Where did you get the feed to feed the horses?

A I got five sacks of oats and five bales of hay when down at Roosevelt—got one sack of oats from Joe Dalton's cache belonging to Tom Aitken—fed them some native hay, not over 100 lbs.—fed them about 200 lbs. of other feed, such as corn meal and stuff like that. We had a bad storm at that time and I cooked every bit of feed the horses had three times a day.

Q Cooked it all?

A Yes sir—had to cook the feed.

Q Why did you have to cook the feed?

A It goes lots farther and they are old horses and can't chew.

Q They have long teeth?

A Yes.

Q Did Mr. Grant or George Wesch complain about the horses not being in good condition when you brought them back?

A Mr. Grant said he never saw them in finer condition—was very pleased with the way I treated them. The only thing that worried him was that we didn't have enough feed. I told him I took a sack of oats from Dalton belonging to Aitken, and fed them all the corn meal and oat meal we had, and if I had more feed I would have kept them a day or two longer and finished my work, but I didn't have the feed, so took them back.

Q Did you have any conversation with Mr. Grant

over there about his placer mining claim?

A No sir.

Q Did Mr. Grant tell you at that time that he was going to come over shortly and do some work on the placer claim?

A No sir.

Q Are you positive?

A I am certainly positive.

Q When you started to sink this hole on the Silver King Lode Claim in conjunction with your partner, Mr. J. L. Tobin, did you go into a hole that had been sunk on that ground?

A No sir.

Q Did you at any time while you were working on that claim go into a hole that had been sunk by any one else?

A No sir.

Q Did you ever tell any one that you had—I mean did you ever tell any one prior to the time that papers were served on you in this case, that you had gone into one of William Grant's holes?

A No sir.

Q Do you know Mr. Harry Owen?

A Yes sir.

Q You heard his testimony here?

A Yes sir.

Q Did you make a trip with him up Copper Mountain?

A Yes sir.

Q Prior to the time you had gone—you started on that trip—tell the jury whether or not you knew that this suit had been brought.

A I didn't know for sure—only that I had a letter from my sister.

(Mr. Stevens enters objection to witness stating any of the contents of that letter—not being the best evidence. Objection sustained.)

Q Have you that letter now?

A No sir.

Q What did you do with it?

A Left it over in the Kantishna.

Q Did you tell Harry Owen that you had gone into Grant's hole?

A No sir.

Q What did you tell him?

A I never told him anything about it—never told him about the case at all when we went up Copper Mountain.

Q Did you talk about your work?

A Oh yes, Mr. Owens was making lots of enquiries about it—I told him I didn't want to talk about it—from what Mr. Lee brought from Fairbanks

(Mr. Stevens objects to witness stating anything about what Mr. Lee or any one told him, unless plaintiff was present. Court agrees that it is thought not proper.)

(Mr. Roth enters exception at this time to ruling of the Court heretofore made denying motion for non-suit made by defendants. Exception allowed.)

Session 2:00 P. M. February 6, 1922.

WILLIAM J. CAMPBELL, one of the defendants,

called as witness in his own behalf, being heretofore sworn, testified:

Further Direct Examination

BY MR. ROTH:

Q Mr. Campbell, on the trip to Copper Mountain, did you tell Harry Owen that you had gone into one of Grants holes and sunk?

A No sir.

Q Was there conversation had between you and Harry Owen and Mr. Tobin down at your shaft on the Silver King Lode Claim?

A Yes sir—the first time he came down there? I didn't understand the question.

Q Did you have conversation with Harry Owen and Mr. Tobin at your discovery shaft on the Silver King?

A Yes sir.

Q What was the substance of that conversation you had with reference to what would have happened if O. M. Grant had sunk that hole deeper?

(Mr. Stevens enters objection on the ground that question assumes that they had a conversation of that kind—it is suggestive and leading. Objection over-ruled.)

A We didn't have any such conversation.

Q Now you didn't understand my question—pay close attention to questions I ask you. Did you have any conversation over at the shaft with reference to what O. M. Grant would have found if he had sunk that hole he started deeper than he did sink it?

(Mr. Stevens enters objection which is over-

ruled. Exception taken and allowed.)

A No sir.

Q I am not asking you concerning your own shaft you were sinking in, Mr. Campbell. I was asking you concerning the shaft that O. M. Grant had sunk.

A If he had sunk it deeper?

Q Yes, was there any conversation at the shaft where the three of you were present?

(Mr. Stevens objects to question as leading. Objection over-ruled. Exception taken and allowed.)

A I don't remember any conversation.

A On this trip to Copper Mountain, Mr. Campbell, with Harry Owen, just state all of that conversation that was had concerning the work of O. M. Grant—if you had any conversation on that point.

A Never had any conversation on that point at all going to Copper Mountain.

Q Did you any place?

A Well not with—O. M. Grant, did you say?

(Mr. Roth abandons the question as he can't make himself understood.)

Q You heard the testimony of Harry Owen?

A Yes sir.

Q In which he stated that you said that if he had gone eighteen inches deeper or four feet deeper, he would have struck float. You heard that testimony?

A Yes sir.

Q Did you ever have such a conversation on this subject?

A Yes sir.

Q Where?

A Where we made a trip from Eureka out to the railroad in October.

Q Of what year?

A 1921.

Q It was not on the trip to Copper Mountain?

A No sir, never said a word about it.

Q About the first day of February 1921 at Aitken's bunkhouse in the evening after supper, William Grant, O. M. Grant, John Busia, and others of the crew—or the rest of the crew—of Tom Aitken being present, did the following conversation take place: Did you say that Quigley had started his new tunnel, and did William Grant then ask you where did he start it, and did you then say, about forty or fifty feet below the blacksmith shop, and did William Grant then say that he (Quigley) was away down over his line, and did you say, "No, his stake is down another 100 ft." and did he say, "No." Did William Grant then say to O. M. Grant that he (referring to Quigley), must be down with his blacksmith shop over 100 ft. below my line, and did O. M. Grant then say, "The stake I put up is in the draw and you can't see it from the other corner, but the shop must be something like that." And did you say, "His (Quigley's) lower center stake is just about where you (O. M. Grant) were working" and did William Grant then say, "I don't care where his lower stake is, I know where my line is,,," and did William Grant then say that "Quigley could just as well have turned in that dead work for assessment work on the placer and saved Aitken \$100.00," and did Mr. Wil-

liam Grant then say that it was more for Quigley's benefit to hold the Hill Bench for a mill site than it was for Aitken's benefit?

A Yes sir.

(Mr. Stevens enters objection and asks that answer be stricken out until he has time to get in objection. Court denies motion, and instructs witness to give counsel reasonable time to make objection before answering questions. Mr. Stevens takes exception and exception is allowed.

Q Did you ever go to the corner stakes of the Hillside Bench Placer Claim?

A Yes sir.

Q When did you see them first?

A Well, it was some time about—I think in the month of—latter part of July or first of August, 1921.

Q What stakes did you go to at that time?

A I went to all that I could find—the northwest and southwest and the southeast corner stakes.

Q Did you then go to the northeast?

A No, that I couldn't find—looked, but couldn't find it.

Q Do you know where it is now?

A I do.

Q Did you look for it in the same place at that time?

A I didn't look in the same place, but was up by that place a good many times and didn't see it there.

Q At that time what, if anything, did you see written on the southwesterly corner stake?

A I saw "Initial post. Hillside Bench. William Grant, Locator."

Q Did you see anything else?

A No sir, I didn't.

Q What, if anything, did you see on the south-easterly corner stake?

A There was nothing on that stake—no writing.

Q What was the condition of that stake at that time?

A It was leaning over almost forty-five degrees.

Q Which way was it leaning?

A Right straight up with the upper line that runs up there—about that direction.

Q What, if anything, did you see on the north-westerly corner stake?

A I saw some writing where it said he claimed 1500 ft. straight down by 1500 ft. straight up.

Q Any signature?

A I could see "Gregar" but couldn't read the first name.

Q What else did you see?

A I saw William Grant's signature—just his name by looking at it closely, and an arrow pointing down towards the southwesterly stake.

Q What was the character of that writing at that time—was it plain?

A No, it was hard to see—could just make it out.

Q What kind of a stake was that?

A It was a spruce stake.

Q What kind of timber was it—green or dry?

A It appeared dry, of course, then—looked like it had been when hewed made out of a green stake.

Q What was that written with?

A Lead pencil.

Q Did you go to those stakes again?

A Yes sir.

Q When?

A When Mr. Dalton, Jack Tobin and I measured this claim.

Q You stated that was on the 20th day of January of this year?

A Yes sir.

Q At that time what did you see written on the southwesterly corner stake, if anything?

(Mr. Stevens enters objection on the ground that what witness saw on the stake in January of this year after suit was brought is immaterial. Objection sustained. Mr. Roth takes exception which is allowed.)

Q What kind of a stake was on the southwesterly corner?

A An old cottonwood stake.

Q What size was it?

A Four inches square and stood about four and one-half feet above ground.

Q What was its condition?

A It was an old black stake—rot all the way—I mean, black all the way through.

Q What kind of a stake was on the southeasterly corner of the placer?

A It was a cottonwood stake and of the same kind of material—it was black—weather beaten—a real old stake.

Q What kind of a stake was it you found on the northeasterly corner there on the 20th of January this year?

A A spruce stake—new stake—a newly made stake.

Q Did you find more than one?

A No sir.

Q What size was the stake?

A Four inches square and stood a little over three feet above ground.

Q What size was the stake in the northwesterly corner?

A I don't know—between 2½ and 3 inches square—possibly 3 inches.

Q When was the first time that you saw William Grant after you took the horses over to Roosevelt on the 11th day of June 1921?

A The 11th day of May, you mean.

Q I mean the 11th day of May.

A About the 23rd day of June.

Q Where did you see him?

A I saw him right back of our tent—we were living at the mouth of Friday Creek.

Q Who, if anyone, was with him when he came there?

A A gentleman by the name of John Biglow.

Q Was there any one else there at that time?

A Mr. Tobin and Joe Dalton.

Q What occurred at that time?

A Mr. Grant hollered, "Hello Joe" and Mr. Dalton went over to where he was and he introduced him to John Biglow.

Q Where did they go?

A Up to Mr. Quigley's residence.

Q Did Mr. William Grant say anything to you or

to Mr. Tobin at that time?

A No sir.

Q When did you see him again?

A The next day.

Q Where?

A Right down by Bartlett's stable—about 125 ft. below our tent.

Q Where was your tent at that time?

A About 350 or 400 ft. up in a northerly direction from the southerly line of our quartz claim we staked

Q Do you know what placer claim it was on?

A It wasn't on the Horse Shoe Bench, but just below the line—I don't know what the name of that claim is.

Q Who were there when you saw him—who was with him, if any one?

A I couldn't say the men now—Cowan Miller, I believe that's who he was speaking to.

Q How close was he to you?

A About 50 or 60 ft. when I walked past him.

Q Where was Mr. Tobin?

A He was down fixing the garden—down a little ways below.

Q What time of day was it?

A Just about twelve o'clock.

Q Noon?

A Yes sir.

Q Did Mr. William Grant say anything to you at that time?

A No sir.

Q Do you know whether or not he spoke to Mr. Tobin?

A Not while I saw him.

Q What were you doing when you saw him the day before when he came there with John Biglow?

A We were working around our cache, moving our stuff out of a cache that the mice had got into.

Q Where was it?

A Right close to our tent.

Q I will ask you this—is there a road that goes up through this placer claim?

A Yes sir.

Q Where does that road go with reference to the tent you lived in—how far from it?

A It is probably 150 ft. from our tent.

Q How near does that road approach your discovery shaft on the Star King Lode Claim?

A It goes above it about 50 or 60 ft.

Q Is the shaft in plain view of that road?

A Yes sir.

Q What did you have on that shaft at that time, if anything?

A We had a windlass.

Q And was there a dump around it?

A Oh yes, a dump.

Q When did you next see William Grant?

A I believe it was the 3rd of July, 1921.

Q Where?

A I saw him down on the road below our lower line—that would be our southerly line—another road coming down from Eureka Creek.

Q Did you have any conversation with him there?

A No sir.

Q Were you alone at that time?

A Well, I was right around—Mr. Tobin went

down to give Mr. Moody a telegram to send outside.

Q Was Mr. Moody with William Grant at that time?

A Yes sir.

Q When did you next see him after that?

A I saw him down at Bartlett's.

Q When—not where?

A I don't know when it was—about—probably ten days after that.

Q Where is Bartlett's?

A About 6½ miles below Friday Creek—down Moose Creek.

Q On Moose Creek?

A Yes sir.

Q Who was with you, if any one, at that time?

A Mr. Tobin, and a gentleman by the name of Mr. Hansen.

Q Who was with Mr. William Grant, if any one?

A Mr. Hansen was with him—we were all at Bartlett's house together.

Q Did Mr. William Grant say anything to you at that time?

A No sir.

Q Did you say anything to him?

A No sir.

Q How long did you stay there at that time?

A Well, I stayed there until about the 23rd or 24th of July.

Q How long did you and Mr. Tobin and Mr. William Grant stay there together?

A We stayed three or four hours in the cabin

together, and Mr. Grant hitched up and went on to Eureka.

Q Didn't you stay all night together?

A I wouldn't say—think we went up that night about eight o'clock.

Q Did you see him there at Bartlett's again?

A No, the next time I saw him was going up Moose Creek—I met him coming down Moose Creek.

Q Who was with you, if any one?

A No one was with me.

Q When was that—what time was it?

A I wouldn't say it was the day after that I went up or the next day—I went up after something—up Eureka Creek, and we were cutting mining timber—I don't remember whether it was one or two days after.

Q After you saw him at Bartlett's?

A Yes.

Q Which way was he traveling at that time?

A Down towards Roosevelt.

Q And you were going the other way?

A Yes.

Q What, if anything, was said by Mr. Grant at that time?

A He never spoke to me.

Q Who was with him?

A Einar Hansen.

Q Did you speak to him?

A I said "Hello" and he said "Hello"—never stopped—they were riding in a buggy.

Q There was no conversation of any kind between you?

A No excepting that.

Q When next did you see him?

A The next time I saw him was the morning of—I guess the morning of the 22nd of July.

Q 1921?

A Yes sir.

Q Where?

A Up at Hamilton's cabin with Mace Farrar and a man by the name of Bob Ellis.

Q Where is that with reference to your shaft?

A About a mile and a half straight up Moose Creek.

Q Near the mouth of Eureka?

A Right straight opposite the mouth of Eureka.

Q Did Mr. Grant say anything to you at that time?

A No sir.

Q Did you say anything to Mr. Grant at that time?

A No sir.

Q When was the next time you saw Mr. Grant?

A Well, that same afternoon or the same day in the morning.

Q You saw him twice the same day?

A He was at this cabin—had Aitken's cayoses, driving towards Friday, and stopped at the cabin and talked to Mace and went on down there.

Q Where did you see him the other time the same day?

A Went down and got a pair of whiffletrees and he was hauling wood from Tom Aitken's wood pile.

Q What day?

A The same day as I saw him.

Q What day was that?

A Think it was the 22nd.

Q The 22nd day of July.

A 1921.

Q When you saw him down there when he was hauling wood, did he say anything to you?

A No sir.

Q Did you see him the next day after that?

A Yes sir.

Q Where?

A Around hauling wood up around the shaft.

Q What were you doing?

A We were woking in the shaft.

Q Did he say anything to you on that day?

A No sir.

Q Did you see him the next day which would be the 24th?

A Yes sir.

Q Where was he?

A Doing the same thing—around putting up a tent and working around there.

Q What were you doing?

A Working there on—I was working the windlass and Tobin was working in the shaft.

Q Did he say anything to you on the 24th?

A No sir.

Q When did you see him after the 24th?

A In the morning about eight o'clock, I believe, at his tent.

Q What day?

A On the 25th.

Q On the 25th of July, 1921?

A Yes.

Q What occurred at that time?

A We were going up to the shaft, and Mr. Grant come out—in and out several times. While walking up to work we picked up some timber that morning—made two trips, I did, up to the shaft from our camp. We were putting some kind of a fence between our shaft and Quigley's dump to keep the rock from rolling down, which could roll down the shaft. Mr. Grant was in and out of his tent six or seven times probably while I made the two trips, and then after we got up there, he come out and stood out in front of the tent while Mr. Tobin and I fixed up the bulk-head to stop the rocks—it probably took us one-half to three-quarters of an hour—then Mr. Tobin went down in the shaft.

Q How did he get down in the shaft?

A I let him down. When he got pretty well down, but before he got down, Mr. Grant came out of the tent with a little hand axe and had a little box about, I guess a corn box or a pea box, about that size, and nailed it on a stake and walked over towards our shaft about as far—about 20 ft. from the shaft from where I was standing, and started to put it up, and put it up. While he was putting it up I gathered up about a dozen nice little stones and he stood watching me and then walked over to his tent. When he went over to the tent I proceeded to throw stones at the box to knock it down. Mr. Grant came right up and sat down in line with the box, and said, "You will knock it down?" I was down on the hill of the dump

and I walked around the windlass so Mr. Grant was not in line with the box and I threw some more stones. In a little while Mr. Roger come out and he went over and said, "Did he hit you with a rock?" and he said, "Yes." Roger waved to come over and I started over and Mr. Grant jumped up and went in the tent and got a gun—he used bad language and said he would blow my brains out if I didn't get off the claim.

Q I will ask you state when was the first time that he ever ordered you off that claim?

A Right then.

Q I will ask you to state whether or not you did hit him with a rock.

A No sir.

Q Was he down on the ground?

A Yes, he was sitting on the ground.

Q How did he come to be sitting on the ground?

A He walked right up and sat down right in line with me and the box, and I walked over to the windlass and he wasn't in line and I kept on throwing at the box.

Q Did you know what was in the box?

A Oh yes, I saw papers but didn't know what it was.

Q Had you seen a paper before there—before that?

A Yes sir.

Q When was that paper put up there?

A I think about the 2nd of July.

Q Was that put up there on the trip Mr. Grant

came over there when Mr. John Biglow was with him?

A No sir.

Q What was in that notice?

A Which notice?

Q The notice he put up—you say you saw up there—what did it contain—the notice before?

A I only read one.

Q You read one?

A Yes.

Q What was it?

A It said, I am the owner of this Hill Bench Placer Claim and would prosecute any one saw on there. Signed William Grant.

Q Was your name mentioned in the notice?

A No sir.

Q Was Mr. Tobin's?

A No one's name was mentioned.

Q You said there were two notices?

A Yes sir.

Q Where were they put?

A One was put about 10 or 12 ft. further up hill from our shaft, facing our shaft. The other was put 60 or 70 ft. up hill on the Quigley—on the Red Top—about in that direction, facing Quigley's tunnel.

Q Did you ever read that one that was put on the Red Top?

A No sir.

Q Did you ever take down either one of those notices?

A No sir.

Q Did you ever see anybody take them down?

A No sir. That one on the Red Top was standing there when I came out the 3rd day of October 1921.

Q How about that one close to your shaft?

A That got knocked down later some time afterwards—it was laying on the ground the last time I was at the shaft.

Q Do you know how it did get knocked down?

A No I don't.

Q Did you ever—I mean on the 25th of July 1921, did you ever throw a stone at William Grant?

A No sir.

Q Did you have any intention of hitting him with a rock at that time?

A No sir.

Q I will ask you to state whether or not you, at the time that you started work on that Silver King Lode Claim—if you had had any experience at all in quartz or lode mining.

A No sir.

Q Have you had much experience in placer mining?

A Not a great deal.

Q You don't claim to have any theories about mining at all?

A No sir.

MR. ROTH: You may cross-examine.

Cross-Examination

BY MR. STEVENS:

Q As I understand you, Mr. Campbell, you helped to make the map which has been introduced as

Defendants' Exhibit No. 2?

A Yes sir.

Q You and Mr. Tobin made it?

A Yes sir.

Q When?

A I think it was on the 2nd day of this month.

Q Where?

A Over at the Gilthey house on the floor.

Q That was the day after this suit was commenced?

A I think it was that evening—yes, it was the 2nd, I am sure.

Q That was after you had seen plaintiff's Exhibit "A", was it not?

A Well, I saw it here, yes.

Q This plaintiff's Exhibit "A" had been introduced in evidence in this case before you started to make your map, Defendants' Exhibit "2"?

A That was before we drew it, yes.

Q State whether or not you took or adopted the same angles on your map, or as near as you could get them, as the angles on the plaintiff's map.

A No sir, we did not.

Q You didn't measure the angles at any of the corners of plaintiff's map?

A No sir.

Q Did any one in your presence—did you see any one?

A No sir.

Q Were you with Mr. Tobin at all times here in the court room when plaintiff's map was examined?

A Most of the time.

Q Do you know whether Mr. Tobin took any measurements from plaintiff's map?

A I don't know anything about it—I never thought about it.

Q Do you know how wide—the approximate width of the Quigley Red Top Lode claim?

A No, I didn't only step it off.

Q Did you ever step it off?

A I did.

Q About how wide was it?

A I figured about 300 feet.

Q You mean from either side of the lode?

A Yes, from the center of the lode.

Q The entire width of Quigley's lode would be approximately 600 feet?

A Yes sir.

Q The claim you staked there adjoining and below or down hill from Quigley's Red Top Lode Claim is the same width?

A Yes sir.

Q Approximately 600 feet wide?

A Yes.

Q When did you first go to the Kantishna country in the vicinity of this ground in dispute?

A 1905.

Q How long did you stay at that time in the Kantishna country?

A I went up there in the spring of 1905 and left there about the first of December 1905.

Q When next did you go to the Kantishna country?

A I think it was 1917.

Q How long did you stay at that time?

A Just a short time.

Q When did you next go?

A In 1919.

Q How long did you stay then?

A I beg pardon—it was 1920—the 4th day of February.

Q Then you have been in the Kantishna ever since except for short trips out? Is that true?

A Yes sir.

Q You have stated, I believe, that you lived down here around about the mouth of Friday Creek, not a great ways from the property in dispute?

A Right on the property.

Q Which property?

A On our quartz claim.

Q How long did you live there?

A We moved there about the first of May 1921.

Q Where did you live prior to that time?

A Well, for probably three weeks we lived down in the woods.

Q How far from this placer claim in dispute?

A About five miles, I guess—maybe a little more.

Q How long did you live there?

A About three weeks, I think.

Q Did you ever live any nearer to the placer claim in dispute than five miles before you moved on what you say was your quartz claim in May?

A I lived up at Eureka Creek.

Q How far from this ground?

A About a mile and a half.

Q How long did you live there?

A Arrived there on the 4th day of February, 1920, and lived there—called it my home—and we went down in the woods to move up those logs to Friday Creek.

Q You still made the Eureka Creek location your home—considered it your home?

A Until we moved to Friday Creek.

Q That is where you live now?

A Yes sir.

Q You had been over this ground different times, had you not, during that time?

A Yes sir.

Q You worked for Tom Aitken in 1920, did you?

A Yes sir.

Q And 1921? The winter of 1920 and 1921?

A Yes.

Q In going up to Tom Aitken's there in your traveling back and forth and in your business, you crossed this placer ground a good many times?

A Yes sir, lots of times.

Q You have been up to Quigley's house?

A Yes sir.

Q I suppose many times?

A Yes sir.

Q And to Quigley's discovery post?

A Not a great many times, but I have been up there.

Q Before you went on this ground in dispute?

A Yes sir.

Q And you have been up to Quigley's tunnel a great many times?

A Yes—not a great many times, but several times

Q Before May of last year?

A Yes.

Q Then in a general way, you were more or less acquainted in that immediate vicinity, were you not?

A I went by up that road lots of times, yes.

Q Did you notice—do you know about the time O. M. Grant sank some holes around in the vicinity of what is now designated as your discovery shaft?

A Yes sir.

Q You saw him there when he was working?

A Yes sir.

Q That was in 19— —was that in the fall—November 1920?

A Yes sir.

Q When you started to work in sinking your shaft on the ground in dispute, did you find that the surface of the ground was frozen?

A Yes sir.

Q How deep was the surface frozen—how deep was it frozen down from the surface—about?

A We broke through the frost about five feet, then in the bottom of the shaft there was a little streak in the rock that stood on edge in the north-west corner of our shaft that let seepage water in the shaft.

Q Was there a large place or just a crevice?

A It was a crevice.

Q You found from the surface down it had been frozen about five feet deep?

A Five or five and a half feet?

Q Then when you got through that frost, was it

thawed from that time on down as far as you went?

A Yes sir.

Q Thawed ground?

A Yes sir.

Q You never used any more powder?

A No, it was thawed.

Q At the time you started to sink, Mr. Campbell, you spoke of seeing another hole about 12 ft. from the place where you sunk.

A Yes sir.

Q You stated, I believe, that it was full of water?

A Yes, pretty near full of water.

Q You don't know how deep the water was?

A No.

Q You didn't measure?

A No.

Q That was on the 22nd of May that you started to work?

A I think it was the day.

Q Was there any snow on the ground?

A It was pretty near all off.

Q Did you have to use any snow shoes at that time?

A Oh no.

Q But there was still snow in places?

A In places.

Q The driving shaft you spoke of consists of a piece of iron with a sharp point and a place immediately above the point that is larger than the rest of the rod, isn't it?

A Yes sir.

Q That is made so you can draw it out handily?

A Yes sir.

Q And at the end near where you drive there is a ring?

A Yes sir.

Q That you use to pull it back out again? That is true?

A That is correct.

Q And you can pound that down in the ordinary frozen ground?

A You can pound it in anything that isn't solid.

Q They use it also to pound—you can sink down through ice?

A Anything.

Q If you want to blow out chunks of ice, you could pound it in the ice and draw it out and put in powder?

A Sure—drive it in anything that isn't solid.

Q As I understand your testimony, you absolutely deny going down in any other shaft except the shaft that you went to bed-rock in?

A Yes sir, I do.

Q And you contend positively that that is the same shaft that you started from the surface and went down to bedrock in?

A Yes, that is just what I do.

Q You didn't go into any other hole or shaft that had been sunk previous to your going there?

A No sir.

Q And you didn't drive the driving rod we have been describing down in the ice in any of those old shafts and blast out the ice?

A No sir.

Q You were present when Quigley and Tobin determined on where to start that shaft?

A Yes sir.

Q And that was the morning of the same day you started to work—May 22, 1921?

A Yes, it was the same day we started.

Q It was really Mr. Quigley that told you where to start, was it not?

A He and Mr. Tobin, they were up looking around.

Q You hadn't anything special to do with determining the place to start the shaft?

A I didn't have anything to do with it—I didn't know.

Q You did what they advised you?

A Mr. Tobin is my boss.

Q He has had more experience?

A He has had some—I haven't had any.

Q In determining there in your presence—when Mr. Tobin and Mr. Quigley were determining where to start the shaft, you may state whether or not they sited and took any lines from Quigley's discovery shaft way up hill, as indicated on your map, down to the mouth of Quigley's tunnel?

A They went up but I didn't watch them—I watched them, but I didn't know how high they went or anything about it.

Q When they went up there was any one down in the vicinity of the shaft for the purpose of setting a stake either to the right or left?

A No.

Q Do you know whether or not it is true that in

determining the place to sink the shaft you speak of, that you aimed to get it down somewhere on the same line as Quigley's tunnel was supposed to run?

A Yes, on the same line.

Q Quigley was there when you started to sink?

A Yes sir.

Q How long did he stay?

A I don't know—I don't know whether we blasted the first hole out or not.

Q Isn't it true that after determining where to sink, he went away about his business quite soon after that?

A Well, probably in five minutes.

Q And John Busia, or some such name, was somewhere in the same vicinity working for Quigley?

A Yes sir.

Q Using a wheelbarrow on the dump near there?

A He was right near there, but I don't know whether he was running a wheelbarrow.

Q It was the same man who was witness here for the plaintiff the other day?

A Yes sir.

Q You say Joe Dalton came along the next day?

A The next morning.

Q Were you working there when Dalton came along?

A Yes sir.

Q And on that same day Dr. Sutherland came there?

A No sir.

Q When was Dr. Sutherland there?

A On the 8th of June; I think it was the 8th of June.

Q But Dalton was there about the 23rd of May?

A The next morning, yes.

Q When you shot out the surface—I mean just below the surface, going through the frost—you may state whether or not as a result of the blasts of powder that the surface around the hole was pretty ragged.

A I don't understand.

Q After you had put in a shot or more to get through the frost in starting your shaft, state whether or not, as a result of the shots, the surface around the hole was pretty ragged in appearance.

A Oh yes, just shot out a little around the hole.

Q After you had gone down with your shaft—that is outlined the shaft at the surface—how big was the shaft at the surface.

A Three and a half feet wide maybe—or four.

Q How long?

A We probably figured on it being five and a half feet long or five feet.

Q Did you maintain that length and width clear down to bed-rock?

A We went down a ways and then timbered the top of the hole before we put the windlass on it—I don't know about it after the windlass was on, I was never down there.

Q About when did you timber around the hole?

A I think it was the third day after we started.

Q Long before you got to bed-rock?

A Oh yes.

Q Outside of the timber you put on there, wasn't the appearance of the surface pretty ragged?

A It was squared up.

Q Did you take off the moss for some little distance back of the edge of the hole?

A No.

Q When you returned the horses that you had borrowed to haul some of your timber, you returned them to Roosevelt to the plaintiff in this case about the 11th of May?

A Yes sir.

Q 1921?

A Yes sir.

Q And when you turned them over to Mr. Grant, Mr. Grant said he never saw the horses in as good condition before?

A Yes, he said they were in better condition than he ever saw them before.

Q Then during the entire trip that you and Harry Owen made together from Eureka to Copper Mountain, you didn't discuss or talk to Harry Owen at all on the subject of your claim or the placer claim, or the matter in controversy?

A What is that question?

Q As I understand your testimony, you say you had no conversation with Harry Owen whatsoever upon any of the subjects in controversy in this suit on the trip that you and Harry Owen made from Eureka up to Copper Mountain in August 1921?

(Mr. Roth makes objection on the ground of being irrelevant, incompetent and immaterial. Court

sustains objection as there wasn't any suit of which any one had notice.)

Q You and Harry Owen traveled together in the month of August between Eureka and Copper Mountain, did you not?

A Yes sir.

Q And no one else was present except you and Harry Owen?

A After we started, no.

Q Did you and Harry Owen have any conversation at all on the subject of your shaft there that is in dispute.

A You mean on that trip?

Q Yes, on that trip.

A Not on that trip, no sir.

Q And you and Harry Owen didn't have any conversation on that trip about your quartz claim that is now in dispute in this suit?

A No sir.

Q I mean yours and Tobin's quartz claim.

A No sir, we did not.

Q And on that trip you didn't have any conversation with Mr. Owen about the plaintiff's Hillside Placer Claim at all?

A Not on that trip.

Q Then, as a matter of fact, on that particular trip you didn't fill Harry Owen 'chuck full', or to any other degree, about what the facts were of your discovery on this particular lode?

A No sir.

Q Mr. Roth asked you as to whether or not a certain conversation was had on the first of February

1921, where you being present, William Grant, the Plaintiff being present and O. M. Grant being present, and a man by the name of Busia, and other members of the crew of Aitken being present. Where was that conversation?

A That was in the bunkhouse—Tom Aitken's.

Q Up hill from the property?

A Yes sir.

(Mr. Roth makes objection that it was not stated to be on the first day of February, but on or about the first day of February.)

Q Tell the jury just exactly what that conversation was.

A I went up there—had been hauling wood up there—and in the evening after supper I told Mr. Grant and all others present that Mr. Quigley had started—Mr. Quigley had started his new tunnel, and Mr. Grant (William) asked me where he started it. "Oh" I said, "about thirty or forty feet below the blacksmith shop." "Oh" he said "he is way over his line now. What the dickens is he down there for?" I said, "No, he has 100 ft. down to his line yet." He said, "No, he hasn't, that hole he was working in before was below his line" and he said to Mr. Grant (O. M. Grant)—he said, "His blacksmith shop must be 75 ft. or 100 ft. below our line, isn't it?" and O. M. Grant said, well, he didn't know exactly, you couldn't see the corner stake that he put up in the draw, but it was something like that—like 100 ft. below his line, and I spoke to O. M. Grant and said, "Quigley's center stake is just above where you was doing assessment work." Billy Grant said, "I don't know where Quig-

ley's center stake is, I know where my upper line is." That was the sum and substance as near as I can remember.

Q Is that all you remember?

A At present, yes.

Q That is all you remember at present?

A Right now.

Q There was nothing else said that you know of at that time?

A Not that I remember of at present.

Q In speaking of the northwest corner of the placer claim of plaintiff's and what you saw on the stake, I think you said you saw some name that sounded like "Gregar"—something like that?

A Yes—"Gregar."

Q But you also saw the name of William Grant, did you not?

A Yes.

Q And when was that, Mr. Campbell?

A When was it I saw it on there first?

Q Yes, you were describing what you saw—I want to know when it was.

A I don't know when I first went up and read "Grant" on the stake—somebody told me it was there.

Q You said it said on the stake "1500 ft. straight down"?

A Yes.

Q And "1500 ft. straight up"?

A Yes.

Q It didn't state 'straight up in the air'?

A An arrow pointed straight up to a stake and one pointed straight down to a stake.

Q That was just above this name "Gregon"?

A Yes sir.

Q You don't know just when you first saw it?

A No I don't, I heard them talking about it.

Q Was it after you and Tobin located your quartz claim, or before?

A I don't know whether it was or not—it was last summer some time.

Q Do you know a man by the name of Gregan?

A I do.

Q In that country?

A Yes sir.

Q You saw the plaintiff quite a good many times after you and Tobin had located, at which times you and Grant didn't have any conversation at all?

A Yes sir.

Q And on July 25th in the morning about eight o'clock, in 1921, you saw Grant come out of his tent with an axe and a box and saw him nail the box on to a stake?

A Yes sir.

Q And that was how close to your shaft, approximately?

A Approximately 20 ft.—it might be 25 ft.

Q And you were standing right there at your shaft—or was you on the dump?

A Yes sir.

Q There was plenty of stones around there, wasn't there?

A Lots of them.

Q And you started to throw stones at the box?

Q Yes.

Q Did you hit the box?

A Yes sir.

Q How many times?

A Oh, three or four times.

Q Did you come any where near hitting Grant?

A No sir, not at that time—he was down towards the tent, when I started throwing at the box.

Q He had nailed up the box and gone away?

A Yes sir.

Q He had left the box and gone down to his tent before you started throwing stones?

A Yes sir.

Q And you stood throwing stones and Grant came out of the tent and sat down on the ground in line between you and the box?

A He didn't come out of the tent—he turned around and walked back.

Q How far was it from where he turned around to come back to where he sat down?

A Oh, maybe 12 or 14 ft.

Q Did you say Roger Parenteau—you know who I mean?

A I do.

Q Did you see him there?

A I saw him after Mr. Grant sat down on the ground.

Q Did you see him come out of the tent—I mean Roger—and look that way when Grant was nailing the box up?

A No sir.

Q When was it you first saw Roger Parenteau?

A After I had walked up away from the lower

end of the dump to the shaft—the upper side of the shaft.

Q How close to the box he nailed up there did the defendant sit on the ground—I mean the plaintiff?

A I think it was about 5 ft.—out on the road.

Q Where did the road go—how close to where the box was nailed?

A The road run between the tent and the box.

Q Is that the same road that runs across the claim into the claim above your shaft?

A No, it is another road.

Q It is a branch road that runs into the other?

A It is the road they haul ore down to the road between our shaft and Mr. Quigley—the road that goes up a steep mountain—they have to have a switchback to get up.

Q When Grant came down and sat down between you and the box, he sat within five feet of the box?

A He didn't sit between me and the box—the box was between me and Grant.

Q The box was right in line between you and Grant?

A Yes.

Q Grant then sat down 5 ft. beyond the box?

A Yes sir.

Q When he was sitting there and before you went any place, did you throw any rocks?

A No, not after he sat there.

Q How many rocks did you throw before he went there and sat down?

A Four or five—maybe six.

Q How big were the rocks?

A Oh, little ones—ten or twelve in my hand. I picked them up while he was driving the stake in the ground. He was standing looking at me when I was picking them up.

Q You mean to say they were so small you could hold ten or twelve in your hand at the same time?

A Yes.

Q Did you throw any larger ones?

A No.

Q As big as hens eggs?

A No, none of the rocks were as large as hens' eggs.

Q None you threw were even as large as hens' eggs?

A No, I don't think there was.

Q Wasn't some of them as large as turkey eggs?

A No.

Q You know the size of turkey eggs?

A I do.

Q After Grant, the plaintiff, had sat down just so the box would be in line between you and he, which direction did you go before you threw any more rocks?

A I went up hill—up towards the shaft.

Q I thought you were standing right at the shaft.

A I was standing on the lower edge of the dump, probably 20 ft. from the shaft.

Q And you went up hill?

A Up above the shaft just on the upper side of the shaft.

Q And then you stopped to throw some more rocks at the box?

A No, I didn't throw any more then.

Q Just then Roger came out of the tent?

A I believe I threw some more and told Roger I was going to knock it down if it took all day. Mr. Grant wasn't in line with the box then.

Q How close did you come to hitting the plaintiff, Grant, with that rock?

A He was off to one side.

Q I didn't ask you that—how close did it come to hitting Grant?

A That rock I threw went into the box.

Q How close did it come to hitting Mr. Grant, the plaintiff?

A He was 5 ft. from the box and the rock went in the box—that was how far.

Q It was as much as 5 ft. from hitting him?

A Roger was between him and the box.

Q How close did it come to Roger?

A He says he was 2 ft. from the box.

Q How far were you from the box when you threw it?

A About twenty-five feet.

Q Did you see Roger lift the plaintiff up?

A No sir, he never touched him.

Q Were you standing there in plain view when Roger came out?

A I didn't see him come out of the tent but after I got up to the shaft I saw him.

Q Didn't Roger come out and go up to where Mr. Grant was then lying on the ground?

A To where Mr. Grant was sitting on the ground—he did.

Q Did you hear Mr. Grant groaning?

A No sir.

Q Were you close enough to hear—within about 25 ft.?

A Yes sir.

Q If he groaned very loud you would have heard him?

A Yes sir.

Q You were nearer Grant than Roger was when in the tent?

A No, I don't think the tent was over 12 or 14 ft. from where the box was.

Q Then the tent was nearer the box than the place where you stood?

A Yes sir.

Q You say Grant was sitting on the ground at this time when Roger came out?

A Yes sir.

Q You mean to say he was not lying on the ground?

A He was sitting on the ground.

Q You didn't see him lying on the ground?

A No, I never saw him.

Q You saw Roger when he came up?

A I did.

Q You say Roger didn't help him up?

A I do.

Q When Mr. Grant got up, you saw him?

A I did.

Q Did Grant run towards the tent?

A You bet he did.

Q Did you run after him?

A No sir.

Q Not after he started going to his tent?

A No sir.

Q You didn't run several steps even?

A No sir.

Q Did you find out afterwards what was in this box in the way of a notice?

A I went up and looked at the notice—saw three or four stones and saw a trespass sign.

Q A trespass notice?

A Yes sir.

Q Signed by William Grant?

A I think so.

Q You saw him when he nailed it up?

A I did.

Q You said Roger waved at you—to do what?

A After he came up to the box I told Roger I was going to knock the box down if it took all day, and he waved at me. I went around from the back side of the shaft to the front of the shaft and jumped across a ditch we had to keep water from going in the shaft, and just as I jumped across the ditch, Mr. Grant got up and run in the tent and got a gun and said he would blow my brains out if i didn't get off the claim.

Q Did you get off?

A I did shortly after that.

Q Shortly after that you were arrested by an officer?

A Yes sir.

Q And fined \$100.00?

A Well, I believe he told me if I went down and

got into any more trouble with Billy Grant I could come up and give him \$100.00.

Q You had a hearing?

A I had a hearing, yes.

Q And he fined you \$100.00, but didn't make you pay it?

A He told me if I went down and got into any more trouble it would cost me \$100.00.

Q That was all he said?

A To the best of my recollection, it was.

Q Why was it you threw those stones at this box?

A To knock it down, of course.

Q Why did you want to knock it down?

A I knew from what had been told me that Mr. Grant was looking for trouble and I thought I would give him a hand.

Q And you wasn't going to give him any hand as long as you could throw rocks at him?

A I wasn't going over there when I knew he had a gun.

Q When you were throwing rocks at the box, were you mad?

A No, I wasn't mad. I was having lots of fun just to see what Billy Grant was looking for.

Q But you wouldn't go up to him unarmed and willing to fight the little man?

A Bet your life I wouldn't when I knew he had gone to Roosevelt and got a gun.

Q You were throwing rocks after he had the gun?

A Yes.

Q You weren't afraid to stand 25 ft. and throw rocks?

A I wasn't throwing at him—was throwing at the box, and hit it too.

Q Weren't you afraid he might turn loose on you with the gun?

A I wasn't afraid he would turn loose as long as I didn't go over.

Q You didn't think the gun would shoot that far? Did you have nerve enough to go up there like a man and fight him?

A No, I didn't have nerve enough to jump on Grant or half a dozen like him.

Q Isn't it true, that you are an over-grown man but you wouldn't jump on him unless you had the best of him?

A No, I wouldn't jump on Mr. Grant at all.

Q Well, Mr. Campbell, did you ever do any work on—we will say on your—within the boundaries of what you claim to be your quartz claim—yours and Tobin's—excepting the work you did there right around the shaft?

A Right at the shaft?

Q Yes, did you ever do any work excepting that?

A That is all, excepting about 40 or 50 ft. below the shaft we just cleaned the moss off—we figured on driving a hole.

Q You didn't drive it?

A No, that was the day I was arrested.

Q Did you find any placer gold?

A No sir.

Q Not within the boundaries of what you claim is your quartz claim?

A No sir.

Q Did you ever find any placer gold within the boundaries of Quigley's quartz location—called the Red Top?

A Any placer gold?

Q Yes, any placer gold.

A No.

Q Did you ever prospect for placer gold?

A Not for placer gold.

Q Did you ever find any placer gold any place within the boundaries of this placer mining claim of Grant's as you have indicated it here on this map, defendants' Exhibit "2"?

A No sir.

Q You never found any placer gold?

A No.

Q Did you do any prospecting to find placer gold?

A Yes sir.

Q Where did you prospect?

A Out of the stuff that come out of the bottom of the shaft.

Q Did you find any placer gold?

A No.

Q Did you find any placer deposit there?

A I did. It came out of the hole.

Q What part of the hole?

A Down at the bottom, or near the bottom.

Q Did you find placer gold—I thought I understood your testimony that when you struck bed-rock

you went down four or five feet into the vein?

A Yes, I believe six or seven feet—I don't know.

Q Into the vein?

A Yes.

Q That was all the further you went down into the vein?

A Yes sir.

Q That would be the bottom of the hole?

A Yes sir.

Q Did you find placer gold at the bottom of the hole?

A No, we didn't find gold.

Q I thought you said—(Interrupted.)

A I said placer silver—I did find placer silver.

Q Whether it is gold, silver, or cinnabar, I would like—I mean did you find any placer deposit of gold, silver, cinnabar, or other precious metal or mineral?

A Yes sir.

Q You found some placer deposit of precious mineral at the bottom of the shaft?

A We found silver.

Q When?

A Before we got down—I don't know when Mr. Tobin panned first—when we first found silver placer.

Q When was the first time—when was the last time you did any work around your shaft?

A The last time we did any work, we worked there just a couple of days before Mr. Tobin went up Copper Mountain—I don't remember just exactly when he went.

Q Did Tobin go to Copper Mountain before you went with Owen?

A Yes.

Q How long before?

A I don't know what day he went—I know now, he went up on the 11th of September.

Q It was in August you and Owen went up, wasn't it?

A I will tell you, he went on the 11th—we were served with papers up there.

Q What month?

A I know it was the 11th—I have reason for knowing what date it was—the 11th of August, I guess.

Q You couldn't have been served the 11th day of August.

A It was two days after I went up and you see Tobin—we were served at Copper Mountain. I got up on the 18th.

Q Of August?

A Yes.

Q And he went up on the 11th—that is, he started for there? Is that right?

A Yes sir.

Q You were served about the 20th of August?

A It was the 20th at six o'clock in the evening.

Q At Copper Mountain?

A Yes sir.

Q About thirty miles from this property?

A About thirty.

Q You on the 12th day of August 1921 covered substantially all the ground here designated on the

map here as Grant's placer claim—you covered that placer location?

A No sir, not all of it—I covered some of it.

Q Practically all?

A About one-half.

Q Mr. Campbell, at or about that time you marked the boundaries of your ground, did you not?

A Yes sir.

Q And you afterwards filed a location certificate, did you not?

A Yes sir.

Q Were the statements made in the location certificate that you filed on record there true?

A Yes sir.

Q Did you ever file any amended location certificate of this claim?

A No sir.

Q You only filed one location certificate of this placer claim?

A Yes sir.

Q It was the very next day after that, August 13, 1921, that you filed of record this location certificate, was it not?

A Yes sir.

MR. STEVENS: We offer in evidence as a part of the cross-examination of Campbell, location notice—the certified copy.

(Mr. Roth enters objection to same as being irrelevant, incompetent and immaterial, and cannot have any effect because it is dated long subsequent to the time of location of this lode claim and can have no binding force at all. Court over-rules objec-

tion and allows location certificate to be admitted and marked plaintiff's Exhibit "F". Mr. Roth takes exception which is allowed.)

Mr. Stevens reads Plaintiff's Exhibit "F" to the jury, as follows:

"Certified Copy. No. 3190. This is to certify
"that I, W. J. Campbell, a citizen of the United
"States and above the age of twenty one, have
"on this 13 day of August, 1921, located placer
"mining claim to be known as the Troy Bench
"Claim located as follows: Initial stake 1420
"feet east of Friday Creek Claim along north-
"ern boundary of the Hamilton bench claim
"(name of claim unknown) thence 1320 feet
"in a westerly direction to post No. 2, thence
"660 feet in a northerly direction to post No.
"3, about 25 feet on Red Top Lode Claim,
"thence 1320 feet in an easterly direction to
"Post No. 4, thence 660 feet in a southerly dir-
"ection to post No. 1, or location post, the
"point of beginning. Discovery made August
"12, 1921, said claim being 660 feet by 1320
"feet.

W. J. Campbell

Locator.

"Filed for record August 13th, 1921 at 8:10
"P. M.

"C. Herbert Wilson,

"Recorder and Commisioner

"This is to certify that the foregoing is a true
"and accurate copy of the document known as
"No. 3190 and recorded in the records of the

"Kantishna Mining and Recording Precinct
"of Alaska.

"In witness whereof I have hereunto set my
"hand and official seal this 20th day of Sep-
"tember 1921.

"C. Herbert Wilson
"(SEAL) United States Commissioner
and Ex-Officio Recorder."

BY MR. STEVENS:

Q Do you know where the Friday Creek Claim
is?

A Friday Creek Placer Claim?

Q It speaks here of 'Friday Creek Claim.'

A I never read the thing or didn't write it out.

Q You signed it?

A I guess I did.

Q That claim adjoins Billy Grant's Placer Claim,
don't it, down at the end?

A The end of it joins on to the side of Friday
Creek Placer Claim.

Q The end of Billy Grant's claim would join on
to the side of the Friday Creek Claim?

A Yes sir.

Q Then you started from Friday Creek Claim,
which would be practically here at Billy Grant's initial
stake, and you measured 1420 feet in an easterly
direction from Friday Creek Claim. along the northerly
boundary of the Hamilton Bench, and at that
point, wherever it is, you established your initial
stake?

A I didn't measure it—I just went up and put a stake up.

Q How near Grant's stake?

A A little further up creek.

Q It is beyond that?

A Ten or twelve feet up hill.

Q It would be some point east, or northeast, from Billy Grant's southeasterly corner?

A Yes sir.

Q That is your initial stake?

A Yes sir.

Q Then you run from there right back along this same line you came—1320 feet?

A I stepped it off.

Q That would bring you down not quite to Billy Grant's initial stake?

A Seventy-five or eighty feet.

Q That would be within the boundaries of your quartz claim—yours and Tobin's?

A Yes sir.

Q From there you go in a northerly direction 660 ft., do you not?

A Up a little ways.

Q Would that go up in the vicinity of the cabin—Quigley's house?

A Along this line. (Indicating on map)

Q It went within the boundaries—that stake would be 25 ft. within the boundary of Quigley's claim?

A Something like that.

Q From there you run in an easterly direction 1320 feet, do you not?

A Yes sir.

Q Which would run it just past the easterly side line, or end line, of Billy Grant's placer?

A Some place near there.

Q From there you go 660 feet down to place of beginning?

A That is it.

Q You based that location on the discovery you made from the material that came out near the bottom of Campbell and Tobin's shaft?

A On the material that came out—I don't think I panned that stuff that day.

Q You panned it some time?

A I don't believe I ever panned myself.

Q Did you ever see any placer gold or silver any other place?

A I saw what they called placer silver.

Q That is what you based the location of your claim on so far as discovery is concerned?

A Yes, that is what I did.

Q Mr. Campbell, when you staked—you and Tobin staked, your quartz claim, you have already described the end lines, or the end line rather of the upper up-hill end of your claim.

A You mean I described it?

Q Yes. Now, your lower end line would be approximately 1500 feet down hill from that, would it not?

A Yes sir.

Q Was your lower end line substantially parallel with the upper end line?

A I think it was.

Q Running in the same direction?

A Yes.

Q You were down when you and Tobin staked the lower end line?

A No, Tobin staked it.

Q Have you ever been down?

A Yes.

Q Do you know where the lower end line is of your quartz claim?

A Yes sir.

Q Did you run down towards Moose Creek, as far as Moose Creek?

A No sir.

Q About how far on the right limit of Moose Creek did you stop?

A Just about the line—on the upper line of the first tier bench—that would make the creek claim first bench and our lower line about on that line—on the upper line.

Q You mean your lower line is on the upper side line or the lower side line of the first tier bench?

A I mean on the upper side line of the first tier bench.

Q Do you understand that this ground that is immediately below the lower side line of your Troy location—do you understand that is Hamilton's?

A The Horse Shoe Bench?

Q Yes, that is the same bench referred to as Hamilton's bench?

A Yes sir.

Q Now, does your quartz location—yours and Tobin's—go on past that?

A Past the Horse Shoe Bench and just about the line—the lower line of the next tier.

Q Do you understand that this Horse Shoe Bench of Hamilton's is the second tier of Benches?

A The Horse Shoe is the third tier of benches from Moose Creek, and the Hill Bench is on the fourth tier—Horse Shoe is third.

Q Then your claim must run from the upper end line down through the Horse Shoe, which you say is the third tier—then it must go through the next bench which would be the second tier and down into the first tier.

A No, just about the line—the upper line of the first tier—that is, the upper hillside line of the first tier.

Q According to that then, the Hamilton Bench would be the second bench instead of the third.

A There is one bench claim below our line—one bench claim—there is the creek, then the first bench and the second bench, and Horse Shoe is the third bench.

Q Then your location goes through Hamilton's bench and clear through the next bench below.

A Not down on the first tier at all—just about the line between the first and second tier.

Q And you maintained approximately the full width of 600 ft. through the entire length of your claim?

A Yes sir, up and down.

Q 600 feet wide?

A Yes sir.

Q That is all on the right limit of Moose Creek?

A Yes, that is, coming down Moose Creek.

Q In other words, Moose Creek runs from east to west generally speaking, does it not?

A No, Moose Creek runs pretty near north and south right there.

Q Do you understand what the right limit of a creek means?

A Coming down creek—looking down creek.

Q Looking down creek, this quartz claim of yours is on the right hand side?

A Yes sir.

Q And Friday Creek runs down into Moose Creek off your property?

A Yes.

Q So then your property with reference to Friday Creek would be on the left limit of Friday Creek?

A Yes sir.

(Recess for ten minutes until 4:10 P. M.)

WILLIAM J. CAMPBELL, one of the defendants, called as witness in his own behalf, being heretofore sworn, testified:

Cross-Examination, (Continued)

BY MR. STEVENS:

Q Mr. Campbell, when was the last time you were in Quigley's tunnel—about?

A The last time you mean now?

Q Yes.

A I was in Quigley's tunnel on the 2nd day of October, last fall.

Q It was timbered at that time around the shaft?

A Yes sir.

Q I mean around the opening of the tunnel.

A Yes, it was timbered right to the mouth.

Q Do you know when the timber was put there?

A Along sometime in the summer time—I don't remember when it was timbered.

Q Was it put there before you and Tobin went on the ground in dispute?

A Before we went on?

Q Yes.

A I wouldn't be able to tell you.

Q I believe you stated you were in Quigley's tunnel prior to the 22nd of May 1921?

A Yes, several times.

Q Did you ever work in that tunnel?

A No sir.

Q You were working for Aitken?

A I worked for Aitken.

Q You are not able to state how far above the mouth of the Quigley tunnel it is until you find rock in place?

A Not from my own knowledge—only from what Quigley told.

Q I mean your own knowledge.

A I don't know anything about it.

MR. STEVENS: That is all.

Re-Direct Examination

BY MR. ROTH:

Q Mr. Campbell, Mr. Stevens asked you to relate all of the conversation you had up there in the bunk-house when the crew of Aitken was present and you

stated some conversation. And you stated that was all you could remember then—you stated in reply to Mr. Stevens after you related the conversation there that that was all you could remember then.

A Yes.

Q Was there any more conversation than what you told Mr. Stevens at that time—about the first of February 1921?

A Well, he had been talking to Grant about another proposition, but had been talking to him about that lots of times.

Q What was that?

A He complained about Joe Quigley could just as well put in the dead work as assessment work and saved Tom Aitken \$100.00—but I heard him kick about that so often.

Q Did he say it at that time?

A Yes, at that time—but I heard him say it lots of times.

Q When you were over at Roosevelt—

(Mr. Roth asks permission to ask a question on a point previously overlooked, and Court agrees.)

Q When you were over at Roosevelt talking with Grant—in the conversation you had with him there—you stated that he did not tell you certain things. Now just relate the conversation you did have with him there.

(Mr. Stevens interposes objection, but Mr. Roth explains that this was the time he was over there and goes to the testimony of Mr. William Grant who testified he had a conversation with William Campbell in which he told Mr. Campbell that he was

coming over there pretty soon to do some work on the placer claim, that he wants to ask him just what William Grant did tell him on the subject of the work. Mr. Stevens asks if it was May 1921, and Mr. Roth says it was May 11, 1921. Mr. Stevens makes no further objection.)

A He just asked me what Joe Quigley was doing. I told him "monkeying around" and he wanted to know if he had uncovered any money, and I said I didn't know whether he did or not. He said he could just as well let Tom Aitken take out a few hundred—was afraid it would take all he had and wouldn't be able to get any other sucker to come in and take it up—said there was nothing in that country only just on top of the ground—take out a little and couldn't find any more—contended the country was no good, and it would be a long time before he would get another sucker to come and take over his property.

(Mr. Stevens moves that answer be stricken out. Court states that it is supposed to be part of the conversation and over-rules objection.)

Q With reference to your placer claim that you staked and the certificate of location which was just filed in this case—did Mr. Tobin, your co-defendant, have anything to do with that?

A No.

Q He was not interested in knowing anything about it?

A No, he had nothing to do with it.

Q Where was he?

A Up Copper Mountain.

Q When he came back, did he assent to that proceeding or repudiate it?

(Mr. Stevens makes objection on the ground of not being proper cross-examination. Court rules that it may be admitted. Exception taken and allowed.)

Q When Tobin got back, or when Tobin first heard that you had located that placer, or undertook to locate a placer, what did Tobin say about it?

(Mr. Stevens enters objection which is over-ruled. Exception taken and allowed.)

A He told me I didn't want to pay any attention to what they told me—it was no good in the first place, and they were just trying to 'job' me.

(Mr. Stevens asks that answer be stricken out as not having anything whatsoever to do with this case Court orders it stricken out and instructs jury to not pay any attention to the answer.)

Q The question I asked is this—and please try and answer the question, if you can—did Mr. Tobin when he found out you had located , or undertaken to locate a placer, did he repudiate your action?

(Mr. Stevens objects to question as suggestive and leading. Court over-rules objection. Exception taken and allowed.)

A He didn't agree with it at all.

Q How did you come to locate it?

(Mr. Stevens objects to question on the ground that it is immaterial why he did it. Objection sustained.)

Q Mr. Stevens asked if you saw O. M. Grant when he was working there' which reminded me

that O. M. Grant—you heard O. M. Grant's testimony with reference to the conversation you had with him when he was working there, didn't you?

A Yes, I remember.

Q I will ask you to state whether or not in any conversation you had with Grant down there that you told him or indicated that you would jump his placer claim if he didn't do the assessment work?

A No sir.

Q He was doing assessment work when you talked with him?

A Yes.

MR. ROTH: That is all.

Re-Cross Examination

BY MR. STEVENS:

Q Mr. Campbell, to refresh your memory—when O. M. Grant was eating his lunch, during the time he was doing assessment work—didn't you see him some place eating lunch?

A I did.

Q Did you not in a joking way say to O. M. Grant in substance that, "you better go on doing assessment work or I will jump your claim"?

A No sir, I did not.

Q You knew he was working there on the claim—on this placer claim?

A Immediately after that—I didn't know it that day.

Q But you saw him working there on this placer ground—Billy Grant's claim?

A I did after I saw him sinking holes.

Q A long time before you and Tobin went on the ground?

A I saw him about the 11th or 12th of November.

Q 1920?

A Yes sir.

Q And you knew at that time he was doing assessment work for William Grant, the plaintiff in this case?

A I knew he was working for Tom Aitken for a long time—he told me of all the work he had done, he had represented six claims for Tom Aitken. I knew Billy Grant staked a claim for a mill site.

Q I will ask you to state whether or not you knew at that time that either Billy Grant or Tom Aitken or somebody else had staked it for placer.

A Yes sir, along about the 10th of the month.

MR. STEVENS: That is all.

MR. ROTH: That is all.

J. L. TOBIN, one of the defendants, called as witness in his own behalf, being duly sworn, testified:

Direct Examination

BY MR. ROTH:

Q What is your name?

A J. L. Tobin.

Q You are one of the defendants?

A I am.

Q Are you acquainted with William Grant?

A Yes sir.

Q Are you acquainted with Tom Aitken?

A Yes sir.

Q Did you go into the Kantishna district in the year 1919?

A Yes, I did.

Q In what capacity did you go in there?

A Working for Aitken part of the time and on the Government road in the early part.

Q Going from Fairbanks—at whose instance did you go to the Kantishna?

A Mr. James Haney.

Q What capacity was Mr. James Haney occupying with reference to your employ?

A He was in charge of everything as I understood at that time—and Mr. Aitken had some interest along in this property—this quartz mining property, known as Quigley Hill.

Q With Aitken?

A Yes sir.

Q What time did you leave Fairbanks?

A The 28th day of May.

Q Did William Grant go at the same time?

A Yes sir.

Q How did you go?

A We went by boat from here to Roosevelt.

Q The boat left right from Fairbanks?

A Yes sir.

Q What boat?

A Charlie McGonigle's launch—I don't know the name of the boat.

Q What time did you get to Roosevelt?

A To the best of my knowledge, it was the 2nd day of June.

Q What was immediately done there after you got to Roosevelt?

A We had some supplies there that were cached, and I stopped there a couple of days after Grant and the others had gone up to the mine to put up the cache.

Q Have you a trade?

A Yes sir.

Q What is it?

A Carpenter.

Q Before I proceed—I forgot to ask you about this map. I refer to map or plat on the wall which has been introduced in evidence and marked “Defendants’ Exhibit No. “2”. I will ask you to state whether or not you had anything to do with the making of that map.

A Yes, I did.

Q Where did you get the data from which you made the map?

A Measuring of the ground.

Q Have you such experience that will enable you to make a plat like that from measurements?

A Yes sir, it is nothing but measurements.

Q How did you arrive at the angles that are contained within that figure there that is bounded by heavy blue lines?

A Square .

Q Measurement in square?

A Yes sir, roughly—just measurement.

Q Did you take any of it off from this plat that has been filed here by the plaintiff?

A No sir, I never measured any part of this fake map.

MR STEVENS: What?

A Fake map.

MR. STEVENS: Which do you mean?

A Your map.

MR. STEVENS: You mean this map marked "Plaintiff's Exhibit A" is a fake map.

A Yes sir.

BY MR. ROTH:

A What is the scale?

A Four inches to 100 feet.

Q How were those measurements procured that you have made on that plat which is Plaintiff's No. 2—I mean Defendants' No. 2?

A How I come by them?

Q Yes.

A I measured the ground known as the Hillside Bench, the Silver King Lode Mining Claim, and the Red Top—which I measured on the 20th day of January 1922.

Q Who took part in the measuring?

A Joe Dalton and William Campbell.

Q And yourself?

A Yes sir.

Q At what point did you start in your measurements of that Hill Bench Placer Claim?

A At the southwesterly corner.

Q What did you find at that corner which was representative of the corner of that placer claim?

A Found a post there.

Q What was written on the post?

A Well, to the best of my knowledge it was "William Grant." I wouldn't be positive there was any more on that stake—it was very faint—very ancient—on an old post.

Q Just describe the post to the jury the best you can.

A It was an old looking stake—weather-beaten—about four inches square.

Q What kind of wood?

A Cottonwood. It stood about three or four feet tall—probably three or three and a half feet—I don't know of anything else.

Q What was the appearance of the wood in that stake at that time?

A It was old and dark colored.

Q Was it such that a lead pencil would make legible writing on it?

A It should if it ever had been put there—probably not very plain.

Q What was the first distance that you got in measuring that placer claim?

A I measured this westerly line running from the southwest corner to the northwest corner.

Q You mean the lower side line of that placer claim?

A Yes sir.

Q That has been designated as the southerly line—it is really the southwesterly side line, but referred to by both sides as the southerly line—so long as we understand. What distance did you find?

A 1395 feet.

Q What is the condition of the surface over which you measured?

A It is fairly level—a little uneven.

Q What kind of measure did you use?

A Surveyor's tape.

Q What material is that composed of?

A The tape?

Q Yes.

A It is considered to be very accurate—I don't know what material.

Q Is it cloth or steel?

A It is called a steel tape, to the best of my knowledge.

Q What did you find at the southeasterly corner of that placer?

A A stake.

Q What kind of a stake?

A Cottonwood—an old stake—might be $3\frac{1}{2}$ feet tall.

Q How was it—was it standing straight?

A It leaned.

Q Which way?

A Am not right sure.

Q Do you remember how much it leaned?

A Quite a bit—it was very much out of plumb.

Q Did you see anything written on that stake?

A I think I saw William Grant's name.

Q Anything else?

A No—I don't remember whether there was an arrow on it or not.

Q From there where did you measure, if any where?

A Measured on up the hill 605 feet to the next stake.

Q That would be as we have designated it the northeasterly stake?

A Yes sir.

Q What did you find at that corner?

A A stake.

Q What kind of a stake?

A A stake—it might be three inches square, possibly a little more. A new stake.

Q What was written on that?

A The letters "N. E." as I remember, and "Hill-side Bench Claim. Locator William Grant." It was very easy to read.

Q Very easily read?

A Yes sir.

Q Was it the northeast corner?

A To the best of my knowledge—the northeast corner.

Q Did it have a number on it?

A No sir.

Q Did you see any more than one stake there?

A No sir.

Q How was that stake supported?

A I believe it was in the ground.

Q Was it tied to a bush?

A No sir.

Q Were there any bushes in that vicinity?

A No, not very close anyway.

Q From there, where did you measure?

A The upper side line of the Hill Bench to another stake above the Quigley mansion.

Q That corner is designated as the northwesterly corner?

A Yes sir.

Q What distance did you find there?

A 1296 feet.

Q What did you find at that corner?

A A small stake stuck up in a pile of rocks.

Q What kind of a stake?

A As I remember—a spruce stake.

Q What size?

A Probably $2\frac{1}{2}$ inches square—nearly square—faced on four sides, but not quite square. It may have been two or two and a half inches.

Q What was written?

A I saw on one side, "I claim 1500 ft. straight up by 1500 ft. straight down" with arrows.

Q Was there any signature?

A Yes.

Q What was it?

A I don't remember whether it was "Shorty Gegan" or "Alex Gegan."

Q What else was on that stake?

A I saw on the other side of the stake William Grant's name and think it said "Hillside Bench"—and an arrow pointing to the so-called initial post.

Q Were there any figures on it at all?

A Absolutely no figures.

Q Was it numbered?

A No sir—if it was, I couldn't find it.

Q Now with reference to those square marks on this plat towards the top of the map from what is marked "Q's tunnel"—what do they represent?

A Quigley's discovery on the ledge and other prospects along the line down to his tunnel.

Q Were measurements made between those points?

A Were they measured?

Q Yes.

A No.

Q Are they estimated?

A Just estimated approximately.

Q The tunnel itself, is it put where it is by measurement?

A Yes sir.

Q From where ?

A From the lower side line of the so-called Hillside Bench and measured on up to the upper line of the so-called Hillside Bench.

Q And what does this figure, "165 ft."—what does that represent?

A That is from the lower end of Quigley's property—the Red Top Lode Claim—to the ledge in the tunnel.

Q And what does that "25 ft." represent?

A From the center of Tobin and Campbell's shaft to the Quigley line.

Q And that "Q's cabin"—what does that represent?

A Quigley's cabin that he lives in.

Q What does that "Q's shop" represent?

A The blacksmith shop—Quigley's.

Q Now I will go back to where I left you before. You got to Roosevelt about the 2nd day of June?

A Yes sir—1919.

Q And how long did you remain at Roosevelt?

A To the best of my knowledge—two days, or possibly three days.

Q What did the plaintiff, William Grant, and Haney and the rest of the folks that were along do, if you know?

(Mr. Stevens enters objection. Objection sustained.)

Q What kind of an outfit was taken in from Roosevelt with them?

A With reference to supplies, you mean?

Q Yes, everything they took in that you know of from Roosevelt.

A At that trip, or during the summer?

Q At that trip—that they took in from Roosevelt.

A They didn't take hardly anything.

Q What did they have to take it with?

A Two little horses.

Q That is all they had?

A Yes sir.

Q What was the condition of the roads at that time?

A There wasn't any—no bridges.

Q What next did you do after that?

A Was cutting right of way for pack horses to get through to the mine.

Q How long were you engaged in that work?

A One month—thirty days.

Q After that, where did you go?

A Half way between Roosevelt and the mine Mr. Haney came down on the way to Roosevelt—could get nobody to use cayoses but me as he supposed

and asked me if I would run the horses and get some supplies up from Roosevelt—which I did and went back to Roosevelt and got what little they might pack.

Q How many trips did you make?

A Am not positive—one or two.

Q After that, what did you do?

A After I got through with packing horses?

Q Yes.

A I worked at the mine up on this hill—Friday Creek—the Aitken mine.

Q Under whom were you working?

A William Grant.

Q Where were you sleeping at that time?

A At Mr. Quigley's.

Q On the 10th day of September 1919, what was there at the mine—the Quigley mine—in the shape of a bunkhouse?

A There was none.

Q What was there in the shape of a bunk tent?

A There was a bunk tent—one man could sleep in it—two or three in a pinch.

Q What was there in the shape of an assay office at that time?

A There was Mr. Albert Johnson—he had a little tent for assaying—what assaying was done—might be an 8 x 10 tent—room for one man with a stove.

Q What did they have in the way of tools?

A They didn't have any.

Q Where did they get the tools you worked with?

A Understand they borrowed from Mr. Quigley and others wherever they might borrow them.

Q Did you know of Mr. Grant doing any prospecting down on this—what is now known as the Hillside Bench Claim?

A I never heard of it.

Q On the 11th day of May 1921, where were you living?

A Was living on what is known as the Silver King Lode Claim at the mouth of Friday Creek.

Q On that day did you do anything at all towards locating the Silver King Lode Claim?

A Put up prospector's stake on the 11th day of May 1921.

Q Do you know Harry Owen?

A Yes sir.

Q Do you know Broker?

A Yes sir.

Q With reference to the 11th day of May 1921, the day you say you set up prospector's stake or post—did you with reference to that day—when, if at all, did you see those two men together?

A Harry Owen and Mr. Broker?

Q Yes.

A To the best of my knowledge, it was the day before—it would be the 10th.

Q Where did you see them?

A I saw Mr. Broker at Dalton's cabin at Eureka Creek first.

Q What did you do after the 11th day of May 1921 with reference to locating the Star King Lode Claim?

A You mean the Silver King.

Q I mean the Silver King, yes.

A I didn't stake it for some time afterwards.

Q What did you do with reference to locating on the ground?

A Started to work there about the 22nd day of May.

Q Where did you go to work?

A Where the shaft was sunk—about 25 ft. below Quigley's line of the Red Top.

Q What is it marked on the plat?

A "C. & T. Shaft."

Q When you started to work there, did you start a new hole or go to work in a hole that O. M. Grant had sunk?

A We started a new hole.

Q Did you ever go in a hole O. M. Grant had started?

A How do you mean 'go in'?

Q I mean go in and work in it?

A No sir—I was in one he sunk, or he is supposed to have sunk, but never did any work.

Q Who were there present at the time you started your discovery shaft?

A Mr. Joe Quigley, William Campbell, and John Busia was occasionally present, working for Quigley a few feet away—he wasn't down at the shaft, as I remember.

Q How deep did you go in the shaft the first day—about how deep the first day?

A Not very deep—did some blasting—the powder we took we used it and don't think we took any more powder back—conflicted with a little water, and

whether we did very much blasting the first day, I wouldn't say.

Q How far down did you get into the ground the first day?

A Probably not more than a couple of feet—it was late when we started, as I remember, and I wasn't very strong on work—had just got over the flu, or what was supposed to be the flu.

Q You were weak?

A I wasn't very weak and I wasn't very strong.

Q How did you proceed with that work?

A We blasted out the frozen ground.

Q How did you get the powder in?

A Used a drill auger or bull pick—drove it in the ground and then blasted it out.

Q How much powder did you use in a charge?

A Not very much. Sometimes the bull pick we couldn't drive clear down and had to drive back with the ring that was on the end—had to leave space for the hammer to work between the ground and the ring—not very deep. Sometimes we used one stick and sometimes two—it all depended.

Q Why did you use powder?

A It was the quickest and easiest way to do it.

Q Was it because the ground was frozen?

A Surely.

Q How deep?

A I don't know that I ever measured—approximately 5 ft., it might have been a little more.

Q You say you encountered some water—just explain.

A A little water in one corner of the shaft—a lit-

the stringer of rock, or slide rock—a little narrow thing went down in the ground a couple of feet and water had gone down, I don't know how deep, anyway a couple of feet, and in order to stop this, we shifted to one side from where it would be, to the other side probably a couple of feet and filled this place where the water was coming—filled it with moss—mossy sod—a little bunch of sod, and tamped it in and then proceeded, I believe the next day or couple of days we worked a little every day on this.

Q How deep did you get before you put on the windlass?

A It might have been—don't believe we measured—am sure it wasn't, probably seven or eight feet—it might have been a little more, but doubt it. There couldn't only one man work in the shaft and I remember we put the windlass on probably a little sooner than we needed to.

Q What were the dimensions of that shaft?

A At the top it might have been three and one-half feet. I know we had to put in a little cribbing to stop the dirt so we could put a little moss and sod in to stop the water coming in.

Q Three and one-half feet is one dimension, and what was the other?

A The first cribbing might have been 6 ft. long, that is, the inside of the cribbing—believed we nailed them together—they were fairly small—had to pack them up the hillside and didn't pack anything larger than we had to to hold the moss and sod back—we probably cribbed it a couple of feet down—don't know that it was any more than that.

Q While you were at work there, did you see Harry Owen there?

A Yes, he came a few days after we started—I don't remember how many days.

Q How deep in the shaft were you when he came, as you recollect?

A Probably ten or twelve feet deep—I was talking to him and I was down in the shaft when he came along.

Q What was the conversation about, do you remember, at the time?

A Well no, I don't know as I could say the conversation—we had found some little float in the shaft up to this time—don't remember whether we had found it just this day or not.

Q Was there anything said to him about the float?

A I remember there being something said.

Q What was it?

A I couldn't say—just showed him this rock—Mr. Campbell showed him some little float we had dug up at that time.

Q Now, near this shaft you had started, was there another hole?

A There was.

Q What direction from the shaft? Standing at your shaft and looking towards Quigley's tunnel, which side would it be on?

A On the right—probably twelve feet away, approximately.

Q Would it be—(interrupted)

A Up Moose Creek.

Q —would it be nearer your upper end line than your shaft or farther away?

A It might have been down hill along the ledge a couple of feet farther than our shaft.

Q What was the condition of that hole when you started your discovery shaft?

A It was sloughing in—there was considerable water in it—don't remember whether it was full or lots of water.

Q How big a hole was it on the surface at that time?

A The surface was caving in—it might have been six feet wide, and safe to say, seven or eight feet long—the water was still seeping and running in from the sod.

Q That was there when you started your shaft?

A Yes sir.

Session 10:00 A. M., February 7, 1922

J. L. TOBIN, one of the defendants, called as witness in his own behalf, being heretofore sworn, testified:

Direct Examination—Continued

BY MR. ROTH:

Q Did you continue that work without interruption—or how long did you continue that work without interruption—until what depth?

A About 48 ft.

Q What were you in when you quit work in that shaft?

A Rock

Q What kind of rock?

A Quartz—mineral rock.

Q What kind of rock is that classed?

A Gold—Silver—

Q You don't quite understand—was it in a vein or lode?

A A vein.

Q Did you see a wall?

A Yes.

Q Now which way did the wall run?

A I couldn't tell quite exactly —only a little wall on one side of the shaft, or rather on the end of the shaft.

Q Did you see any mineral in any of that rock?

A Yes sir.

Q What did you see?

A Silver.

Q How did you see silver?

A Well, I could tell silver in the rock.

Q Did you pan any of it?

A I did pan some but most of it was hard rock—decomposed ledge.

Q Did you see silver in any of your pannings?

A No sir.

Q How did you come to select that place to sink?

(Mr. Stevens makes objection on the ground of being immaterial, incompetent and irrelevant. Objection over-ruled. Exception taken and allowed.)

Q How did you come to select that place to sink?

A Well, I had a line of the ledge by Mr. Quigley's holes that had been sunk on the same ledge, and Mr. Quigley and I talked it over what line—about where I should most likely hit this ledge on this so-known Silver King Lode Claim.

Q Now you said you saw Harry Owen when in that shaft?

A Yes sir.

Q What depth did you say you were in the shaft when you saw him?

A Ten or twelve feet, about.

Q How did you come to know it was that depth?

A Mr. Owen came to the shaft and talked about some prospect he had just discovered up Eldorado Creek somewhere on some ledge, and he had some samples with him and he tossed down a few to me and asked me to look at them, and asked what I thought of them. When I got through looking I told him I thought they looked very good and tossed them back up to him.

Q He didn't send them down in a bucket?

A No sir.

Q Did you make a trip to Roosevelt before you got to the bottom of that hole?

A No sir.

Q Did you while working in the shaft?

A Yes sir.

Q When was it you made a trip to Roosevelt?

A On the 15th day of June, 1921—I didn't get quite to Roosevelt that night—within a couple of miles—slept by a camp fire, and the next morning, the 16th of June, I got there.

Q Did you see the plaintiff, William Grant, at Roosevelt?

A I did.

Q What was your business with him, if any?

A I went down to buy cayooses of Aitken.

Q Did he say anything about you prospecting on this ground?

A Yes.

Q What did he say?

A He says, "I heard you struck it pretty good,"—or rich, I wouldn't be sure about the exact word—I says, "We have a good prospect" and he says, "I understand you sunk in one of my holes."

Q What did you say?

A I said, "No, I did not."

Q Was there anything else said?

A Nothing concerning this ground—we talked about the neighbors and others—Mr. Miller stood by.

Q What Mr. Miller?

A Known as 'Cow' Miller.

Q H. I. Miller?

A Yes sir.

Q At that time did William Grant complain in any way about your working on this placer claim?

(Mr. Stevens makes objection on the ground that question calls for conclusion of the witness. Court sustains objection and states that witness may be asked what was said.)

Q Did William Grant say anything further with reference to your working on that ground?

A No sir.

Q When did you next see William Grant?

A About the 23rd of June, to the best of my knowledge. I haven't it down—I wouldn't be positive of the date.

Q Where were you at the time you saw him—where did you meet him or see him?

A I saw him on this Silver King Lode Claim—we were living on this and as he came along, I and Mr. Campbell and Mr. Joe Dalton were there together doing some work on our cache where we kept supplies and groceries in.

Q Did you have any conversation with Mr. William Grant at that time?

A No sir.

Q Did he pass the time of day?

A No sir, not to me.

Q How close were you to him?

A It might have been 100 ft. and might have been a little more.

Q Who was with him, if you know?

A Mr. John Biglow.

Q What occurred at that time?

A Mr. Grant spoke to Mr. Dalton—hollered, "Hello, Joe" and Mr. Dalton went on over to where they were standing on the trail going on up to Mr. Quigley's, and Mr. Grant introduced Mr. Biglow to Mr. Dalton. There was nothing else that I know of. They went on up to Mr. Quigley's.

Q When was the next time after that that you saw Mr. Grant, Mr. William Grant?

A Well, I think the first time I was talking to him—(interrupted)

Q No, I am not talking about that—did you see him the next day?

A No, I don't believe I saw him, but I know he was there—I heard the wagon go by.

Q Where were you?

A I was down at the garden, probably a quarter of a mile, doing work along about noon time when he drove by on the road—I couldn't see for the brush, but I thought in my own mind it was him.

Q When did you see him again?

A The next time I saw him was the 3rd of July.

Q Where was that?

A On Moose Creek, on the lower end of the Silver King Lode Claim—I went down to catch the mail wagon.

Q Were you at Bartlett's camp—did you ever see him at Bartlett's camp?

A I did.

Q Was that before or after the time you just mentioned now?

A After.

Q Allright, tell about this next time.

A I saw him on the 3rd day of July when he was returning with the mail from Kantishna post office to Roosevelt—I went down to give him some mail and a telegram I gave to Mr. Moody to send for me.

Q When was that?

A The morning of the 3rd of July, 1921.

Q Was anything said between you and him at that time?

A Yes.

Q What was it?

A He told me to keep off this Hillside Bench and he called me a few pretty strong names and we had a few words, of course.

Q I will ask you to state whether or not that is the first time there was any protest made about your being on the Hillside Bench.

(Mr. Stevens enters objection to the question which is over-ruled. Exception taken and allowed.)

A Yes sir.

Q And how deep—to what extent had your work gone at that time in your discovery shaft—how deep was the shaft—about? How much work had you done altogether?

A We were—I don't say we wasn't clear to the bottom of 48 ft.—it might have been 44 ft. We were down in the ledge at this time, but just exactly what depth, I couldn't say.

Q What work on the shaft, if any, besides that in the way of timbering?

A We had timbered down about 15 ft.—all the timber we had there to use.

Q Did you have a talk with Harry Owen on Eldorado Creek?

A I did talk with him a few minutes.

Q When?

A I don't know what date—it was in the fall as there was considerable snow on the ground—it was the day before I and Mr. Campbell left Kantishna to come by way of Highway Pass to the railroad.

Q Was anything said between you and him on the subject of your going into another hole to work at that time?

A Yes, there was.

Q What was it?

A He said something about—I don't remember just the exact words—about it was kind of bad about sinking in this hole. I said, "If we did go down in the hole, what of that in this case?" I led him to believe we did go in an old hole, but I didn't say it was Grant's hole.

(Mr. Stevens enters objection to the answer and objection is sustained.)

Q After the 3rd of July, when was the next time you saw William Grant?

A I don't know that I saw him the next trip—I don't just remember now—he returned about possibly the 10th of July to Eureka post office.

Q I am asking when you next saw him yourself.

A To the best of my knowledge, it was the fourth trip I saw him at Bartlett's—we were down in the woods about seven miles from Friday Creek.

Q How long were you in his company there?

A Well, a good part of the evening and over night—we stopped over night in the same building—we were stopping to cut mining timber for a hydraulic plant moving into the Kantishna.

Q Did anything pass between you and Mr. William Grant at that time?

A No sir.

Q Or between Mr. William Grant and Mr. Campbell in your presence?

A Nothing whatever, that I know of.

Q Who else was there?

A Hansen—Einar Hansen I believe is his name

—was traveling with Grant.

Q When was the next time that you saw Mr. William Grant?

A Well, about a couple of days before this trouble on the ground—probably about the 23rd of July—maybe the 22nd.

Q Where did you see him at that time?

A I saw him on the ground—believe he was hauling some wood.

Q Did he speak to you at that time?

A No sir.

Q Did you see any of that difficulty between him and William Campbell on the surface of the ground at that time?

A No sir, I was in the shaft—down in the shaft.

Q Did you hear any of it from where you were?

A Well, very few words.

Q When did you first observe the trespass notices? spoken of, on the ground there?

A Something about the early few days of July, to the best of my knowledge.

Q With reference to this time he told you to keep off—when was it you saw him?

A The 3rd of July.

Q When was it you saw the notices, with reference to that day?

A A few days before.

Q 'A few days' means nearly anything.

A I don't know the date.

Q I am not asking the date—was it as many as ten days before?

A I said the first few days of July—probably the

first or second of July.

Q Did you say that you never read the notice?

A I said so, yes.

Q So you don't know what was in the notice?

A No I don't—I knew they were there.

Q Did you ever tear down any of those notices?

A No sir.

Q Mr. Tobin, I want to go back to November 1920, and ask you to state, if you know, between—whether between the 3rd day of November 1920 and, say the day you set the stake, the first stake on this claim, which would be the 11th day of May 1921—if there could have been men hired on that ground to help sink a hole to bed-rock?

A Yes sir.

Q How do you know?

A I know they could have gotten me, for one.

Q Were there times that you were unemployed?

A Yes sir. I helped Mr. Quigley whenever he needed me.

Q I will ask you to state whether or not at the time that you set the first stake on this ground and started work there, if that was a well known lode?

(Mr. Stevens objects to question as calling for a conclusion of the witness. Objection over-ruled. Exception taken and allowed.)

A It was.

Q I will ask you to state whether or not that lode was discussed generally in the community there—among the people of the community.

A Yes sir.

Q I will ask you to state whether or not that lode

was well known to exist in that community south of the southerly—of this blue line on this map, which represents the northerly line of the Hillside Bench Claim.

(Mr. Stevens enters objection on the same ground as the last objection. Same is over-ruled. Exception taken and allowed.)

A Yes sir.

Q I will ask you to state whether or not that also was generally discussed among the people of that community?

A Yes sir.

Q Prior to the time you started to sink this discovery shaft, I will ask you to state whether or not you had been inside of Quigley's tunnel.

A Yes sir, many times.

Q How deep was that tunnel driven before you started to work?

A I don't remember just exactly—probably 100 or 125 feet—might have been more or less.

Q About the 10th day of May, 1921, did you see Harry Owen?

A Yes, I did.

Q Are you acquainted with a man by the name of Ed Broker?

A Yes sir.

Q Did you see him also about the 10th day of May 1921?

A Yes sir.

Q Where?

A I saw him first at Dalton's cabin at Eureka Creek.

Q Where did you first see Owen on that day?

A I met him at Friday about the line of the Silver King Lode Claim—Mr. Broker and he came down from Eureka together—Mr. Owen was there with a dog team and stopped and talked.

Q Indicate on that plat about where you stopped and talked.

A Somewhere along this line. (Indicating)

Q Which line is that—the easterly line of the Silver King?

A This line—the southeasterly or easterly.

Q Did you travel together from there—the three of you?

A We walked over as far as where the range was that belonged to Mr. Broker.

Q Where did you walk?

A Over here on the Silver King near the center of this ground—(Indicating on map.)

Q At that time and place, did Mr. Owen say, "Here is where that ledge comes down"?

A Yes, he said "ledge" or "lode."

Q Just state which way he was looking or if he pointed any way at the time.

A He looked up hill—I supposed from the conversation that he meant this ledge—there was no other that I know of.

Q Were the holes of Quigley's in sight there as well as the tunnel?

A The holes were in sight, but I wouldn't be positive of the tunnel from where we stood.

Q With reference to those holes—where was Harry Owen standing at that time?

A Nearly in line—nearly in the center of this Silver King.

Q Did Mr. Broker say anything?

A No, he did not—not a word.

Q Was anything else said?

A No sir, that was every word said regarding this ledge or lode that he mentioned.

Q Did you do anything as a result of that conversation?

A Yes, the next morning, I remember.

Q What?

A I went and staked this ground—put out a prospector's stake.

Q I will ask you to state if you had been figuring on staking that before.

A Yes, a long time.

Q Why hadn't you started before?

(Mr. Stevens enters objection and Mr. Roth agrees to withdraw question.)

Q Do you know who was bookkeeper over there at Tom Aitken's mine on the 10th day of November 1920?

A To the best of my knowledge, I do.

Q Did you have any dealings yourself with the bookkeeper about that time?

A I couldn't say that I did—personally.

Q Mr. Tobin, did you have anything to do with the location or attempted location, of a placer claim covering any part of this ground at any time?

A No sir, absolutely none—I was not there.

Q Did you ever at any time give your consent to the location or attempted location, of any placer

claim there?

(Mr. Stevens enters objection to question as calling for conclusion of the witness. Objection overruled. Exception taken and allowed.)

A No, I never did.

Q After you heard that such an attempt had been made, did you do anything with reference to it at all?

A Yes, I went to the recording office—Mr. Wilson, at Eureka, to get—to see what I might do. He informed me I couldn't do anything and believed it was best—(interrupted)

(Mr. Stevens objects to witness answering further on account of being immaterial. Objection sustained.)

Q Is there something else I haven't asked you?

A Yes, there might be something.

(Mr. Roth asks permission to speak to witness and Court grants it.)

MR. ROTH: You may cross-examine witness.

Cross-Examination

BY MR. STEVENS:

Q Mr. Tobin, you stated I believe that you went to the Kantishna country from Fairbanks and left here about May 28, 1919?

A I did.

Q And you hired out to Aitken here in Fairbanks before you left?

A I hired out to Mr. James Haney, known at his time to be a partner of Aitken.

Q You knew that at the time, that Haney was

going there to work for Aitken?

A Yes, that's what he told me.

Q Did he work for Aitken immediately upon arrival there—I mean Haney?

A I suppose he did.

Q Don't suppose—don't you know whether he did—so far as you know?

A I was just telling you I didn't go up to the mine just then.

Q Did you see Haney upon landing there do anything with reference to Aitken's outfit?

A I don't know whether it was for Aitken or the Commission.

Q Isn't it true, at the time Haney left Fairbanks he went there for the Road Commission and not Aitken—under the direction of Bobby Sheldon?

A Solely for the Commission, you mean?

Q I didn't ask solely—don't you know whether or not that Haney left Fairbanks and went to that country for the Alaska Road Commission?

A We understood he went for both—he was a partner with Aitken.

Q How do you know?

A He told me he had an interest with Aitken in this property known as Quigley Hill—an interest as I understand.

Q That was hearsay—you understood he was a partner of Aitken?

A Yes.

Q You also understand he went for the Alaska Road Commission?

A That was included as far as I understood.

Q When you left here, you left expecting to work for Haney, didn't you?

A To work on the road and then go to work in the mine.

Q You worked on the road under the supervision of Haney for the Road Commission?

A I worked under Haney one month, to the best of my knowledge, on the road.

Q And you got your pay from the Government, did you not?

A I did, as I remember—I did.

Q Not from Aitken, or not from Grant?

A No—for the month.

Q In other words, the first month in the Kan-tishna you worked for the Road Commission?

A Yes sir, as I understand it.

Q Your time was all taken up with the Road Commission?

A For the month.

Q You didn't pay any particular attention to the Aitken business at that time—that first month?

A Well, I was cutting out a right of way for Aitken's horses to get from Roosevelt to the mine—that was our work—building bridges.

Q You saw the map that has been introduced as plaintiff's Exhibit "A" before you started to make your map, which is Defendants' Exhibit "2"—you didn't start making your map until Plaintiff's Exhibit "A" was introduced in evidence?

A No.

Q Didn't you come up to the board and look at it the first day?

A Not any closer than others standing in front.

Q Didn't you and Mr. Campbell, or Mr. Roth?

A Not very close.

Q Before you started making your map?

A It was before.

Q Now you stated here yesterday something in regard to plaintiff's Exhibit "A", and called it a fake map—did you not?

A Yes sir.

Q In what particulars is the map called Plaintiff's Exhibit "A" incorrect, if at all?

A It has got a fake line, for one thing.

Q You state we have a fake line on there—what line do you refer to on plaintiff's Exhibit "A"?

A You established 660 ft. post called No. 5—as I understand—corner No. 5.

Q Where is the line you say is a fake line—between what points?

A I believe this is what it says "corner No. 5."

Q Which is the line you say is a fake line?

A This line is not on this ground. (Indicating on map.)

Q Do you mean the line as drawn from where it says "corner No. 5" to corner No. 3 post?

A Yes sir.

Q That is the line you say is fake?

A I do.

Q Why do you call it fake?

A Because there is no line and no post there.

Q You have been in Court, haven't you, ever since this trial began?

A Yes sir.

Q You heard the testimony of Mr. Friedrich who made this line, did you not? And he stated that there was no post at corner No. 5?

A He said 'a peg'.

Q That he put there—don't argue, answer the questions and answer fairly—you heard Friedrich's testimony that he put that peg there, did you not?

A I did.

Q You heard Friedrich say he measured 660 ft. up along this end line from initial post to reach that place where he set his instrument at corner No. 5, didn't you?

A Yes sir.

Q And that from there he took measurement over here to corner post No. 3?

(Mr. Roth objects to question as incompetent, as he states Friedrich said he did it by triangulation. Objection over-ruled.

A I couldn't say I did.

Q You didn't hear anyone pretend—counsel or any witness—you didn't hear anyone pretend that Grant had ever put a stake there at what is designated as corner No. 5?

A No, I couldn't say I did.

Q Is that all you have to say about that particular line?

A If you might ask more, I will tell you more.

Q Have you any other objections to that line than what you state?

A I couldn't say that I have—I only called it a fake line, which I contend it is.

Q It was put there to illustrate the area of the

Hillside Bench from a line which is 660 ft. above the initial stake, which is according to the location certificate. You have just pointed to 'corner post No. 4, haven't you?

A You call it corner No. 4.

Q That is the place you just pointed?

A Yes.

Q You said that is our stake?

A I believe so too.

Q I believe so too. Now, that is the stake you understand that Mr. Grant, the plaintiff, placed there when the claim was originally located?

A I guess that is the one—the only one.

Q You saw some stakes down hill at the initial place?

A I saw Hamilton's.

Q You saw some writing on one side?

A I did.

Q You saw an old stake over here at the south-east corner?

A Yes.

Q And that was what stake?

A Hamilton's stake.

Q You saw some writing on the inside of that, didn't you?

A I think I saw William Grant's name on it.

Q You have already testified concerning this stake?

A Yes.

Q In what other respect do you claim that is a

fake map—referring to Plaintiff's Exhibit "A"?

A I couldn't say anything other—anything more than the fake line.

Q Now between your measurements and ours—there is some differences between your measurements and those indicated on here?

A There certainly is.

Q You do not pretend that the angles of your map are correct?

A I am not posing as an engineer.

Q I didn't ask that—I asked if you pretended that any of the angles of your map are correct?

A No, I don't—quite—they are near enough for me.

Q As you have indicated on your map in blue lines the length of each line—the end lines and side lines—are you able to state the number of acres in the area?

A No sir, I didn't figure it.

Q You never calculated it. The only difference between the measurements you made and the measurements on Plaintiff's Exhibit "A"—yours seem to be a few feet shorter on each line, is that right?

A Quite a few feet.

Q Well, how many? The northerly side line of this blue claim—blue marking—is 1296 feet, according to your measurements, isn't it?

A Yes.

Q And it is 4 feet longer according to Plaintiff's Exhibit "A"—that is true?

A I don't know.

Q Look at it and see. It says, "1300 feet". And

the lower side line you have 1395 feet and Exhibit "A" of Plaintiff's has it 1400 ft. and 8 inches, that is a difference of 5ft. and a fraction. Now the end line on your map is 605 ft., whereas, on Plaintiff's Exhibit "A" it is 616 ft. That is a difference of 11ft. That is true, isn't it?

A Yes.

Q On Plaintiff's Exhibit "A" the distance between initial post and post No. 4 is 696 ft. and yours is 778 ft.—no, on Plaintiff's Exhibit "A" it is 796 ft., which is a difference of about 20 ft.

A Quite a difference.

Q Well, it is a difference of 20 ft. You don't pretend to be a surveyor?

A I said so, yes.

Q The ground along the upper side line there is quite rough, is it not, and hard to travel across?

A It is rough and a steep mountainside.

Q Rough too?

A Not very—just steep.

Q It was more difficult to measure that than if smooth ground?

A Not much.

Q A part of the distance between initial stake and the northwest corner—part of that is pretty rough, isn't it?

A Steep.

Q In your direct examination, in answer to some of Mr. Roth's questions, you described what you saw on these various four corner stakes of Grant's, and that was, as I understand, what you saw in January of this year, was it not?

A Yes, I saw them then.

Q Did you ever see any of the writings on this corner—and I refer to the lower left hand corner of Defendants' Exhibit "2"—prior to the time that you entered upon the ground that you afterwards located?

A Did I ever see anything prior to that time?

Q Did you ever see that stake that is referred to as Grant's initial stake?

A Prior to the time?

Q Yes.

A Yes, I saw it in the distance.

Q Did you ever get up close enough to examine it?

A Prior to that time—no.

Q Did you ever see the up-hill—it would be the northwest corner of this placer claim prior to the time you entered on the ground you afterwards located as the Silver King?

A Only in the distance.

Q But never examined it?

A No.

Q Did you ever see the southeast corner referred to as corner No. 2 of Grant's placer, prior to the time you entered on the ground that you afterwards claim to have located as the Silver King Lode?

A Yes sir.

Q Did you examine it?

A I did not have no occasion to.

Q You didn't see what was written on there, if anything, prior to the time you entered on the ground?

A No sir.

Q And is that same true in regard to the north-easterly—you never saw that prior to the time you entered on the ground for the purpose of locating the Silver King?

A No, I didn't—or anybody else.

COURT: I think you should confine yourself to what you know yourself.

Q I asked you if you were there and saw the stake at that corner prior to the time you entered on what you afterwards located as the Silver King Lode.

A I was there at this corner.

Q Did you go to the Recording Office of the Kantishna Precinct and examine the records as to the lines that Grant claimed as his placer ground prior to the time you went on the ground you afterwards located as the Silver King Quartz or Lode Claim?

A No sir.

Q You never did?

A I did not.

Q How long had you lived in the vicinity of this ground before you entered upon the ground for the purpose of prospecting?

A I first went into the Kantishna in the spring of 1919—stayed that season and came out in the fall.

Q From the time you went in in 1919, up to—we will say, May 10th or May 11th, 1921—you traveled one of these roads that runs through this property from time to time?

A I did.

Q And did you work for Mr. Quigley up there at any time?

A I helped put up a building.

Q You helped put up his house?

A Yes sir.

Q And his blacksmith shop?

A Yes sir.

Q And did you work for him when he put up his other buildings—the one called the bunkhouse?

A That was built this fall—I did not.

Q And you helped Mr. Quigley build the cache?

A I did.

Q All that work you did for Mr. Quigley was prior to the time—prior to the time you entered on this ground for the purpose of prospecting?

A Yes sir.

Q Did you ever work in Quigley's tunnel?

A No.

Q But before you entered on the ground, you were familiar with the location of Quigley's discovery shaft which is indicated on your map?

A Yes sir.

Q And you knew the location of the tunnel?

A I surely did.

Q Had there been any vein or lode uncovered within the boundaries of any of the ground that you claim under your quartz location, yours and Campbell's, down hill from the mouth of Quigley's tunnel, at the time you went on the ground to prospect?

A The question is—was there any ledge uncovered below the tunnel, I understand?

Q Yes, below the mouth of Quigley's tunnel—

was any vein or lode exposed or uncovered?

A None that I know of.

Q Then you didn't know of the existence of any lode within the boundaries of what is now the Silver King Lode Claim of the defendants until you and Campbell put down your shaft and discovered that lode about the first of June, 1921, did you?

A No, I didn't know of any other.

Q You didn't know of the existence of that lode until you went down and opened it?

A I didn't see it.

Q You believed it was there, isn't it true?

A Sure, it was there.

Q Why are you sure?

A I knew it was all the way up the mountain.

Q How far up does it go up the mountain?

A About a half mile.

Q It is the same ledge? Has it been opened all the way to tell?

A It has been lined up there and opened.

Q It is on line?

A Yes sir.

Q That is all you know about it?

A It is the same kind of ore.

Q The same kind of ore and running in a straight line?

A Yes sir.

Q You believe it is the same ore?

A Pretty sure.

Q You stated that the ledge you and Campbell uncovered here is the same ledge that Quigley located?

A Yes sir.

Q How do you know?

A By the looks of the ore—the value of the ore—it is the same ledge.

Q Has it been traced—has it been located all the distance for 165 ft. above your shaft between your shaft and Quigley's tunnel—has it been opened up?

A Above the tunnel?

Q No, below the mouth of the tunnel and down to your shaft?

A No, but it is on line.

Q It is on line?

A Yes sir.

Q Do all quartz veins or lodes run in a straight line?

A I don't know.

Q How long have you been mining?

A About twenty-three years.

Q And you don't know whether quartz veins run in straight lines, or not?

A No I don't.

Q You don't pretend to know?

A No sir.

Q I thought you just now said you knew this was the same vein because it was in a straight line?

A It is in straight line, but I don't say all run in a straight line.

Q You don't know whether all veins run in a straight line?

A I don't know.

Q You don't know of veins that run—make a bend and run crooked, do you?

A No.

Q Isn't it true, the only reason that you can give for your belief that the vein that you and Campbell discovered is the same vein or lode that Quigley located, is that it is the same kind of vein matter and is in straight line, down hill with it—isn't that the only reason you can give?

A I judge from the same ore—

Q Answer my question—the reason for your belief is that it is the same kind of looking ore and in straight line?

A Yes sir—the only reason.

Q You have no other reason—or what other reason, if any?

A I don't know that I have any—I know it is in line and the same ore.

Q But you don't know whether that is a continuous vein, or not?

A Could prove it by sinking a shaft on it and prove it.

Q There is 165 feet between?

A There is no shaft between the tunnel and our shaft on the Silver King.

Q It has never been demonstated that there is any ledge between, has it?

A No. There is plenty of ledge above to know it is the same ledge.

Q But you don't know whether it runs five feet or five miles.

A It may run forty for all I know.

Q You have claimed from your tunnel, 1470 feet, or thereabouts, down hill along the strike of the

lode, as near as can be ascertained—you did that in your location notice, didn't you?

A I believe so.

Q If you can ascertain that lodes run straight, why didn't you put in the location certificate that you claim along the lode, instead of 'as near as lode can be ascertained'? If they should run straight, why didn't you make the line straight and locate.

A Isn't it?

Q You have done so on the assumption that the lode is apt to run straight, haven't you?

A Yes sir.

Q It is liable to turn any time, isn't it?

A It might, I don't know.

Q You knew you were in about line?

A Knew I was in about the same ledge.

Q No, you don't. It might be another ledge, mightn't it?

A Well, I don't know how it could be.

Q Don't you know in almost any quartz country, especially in Alaska, that when a man starts to mine out a vein, that it frequently occurs that he loses the vein entirely?

A Oh yes.

Q You know that?

A In some cases.

Q And sometimes he runs to one side for a good many feet and finds it again. Veins are broken up, aren't they?

A Yes, but not in this case.

Q That is your opinion in this case?

A I can prove it. Every one of Mr. Quigley's

holes he sank along there he sank on the ledge, and he didn't sink to one side or the other—direct on the ledge.

Q That proves to your mind, so far as Quigley demonstrated the direction of the lode, that it runs straight?

A Yes sir, Mr. Quigley and I lined up this ledge from the tunnel and the discovery shaft and others and decided if we would sink right here we would land direct on the ledge, which we did.

Q That was because it was on a straight line?

A Yes, how could it be otherwise?

Q How far in a southerly direction along this line does the vein which you and Campbell uncovered extend?

A I just said it might extend forty miles—I am not sure.

Q I am asking you as a matter of fact, how long does it extend?

A How would I know?

Q I claim you don't know.

A I don't know.

Q You don't know whether it extends up stream from your hole up to the tunnel, do you?

A I am quite sure it does.

Q You believe it does?

A Sure it does. It can be proven that it crosses Moose Creek.

Q The same ledge?

A The same ledge.

Q How far is that?

A From here it is probably 2,000 ft. where it

shows across Moose Creek in the mountain.

Q You held up your right hand and swore by the ever-living God?

A That is what I had to.

Q And you are willing to swear before the Living God that that is the same ledge?

A To the best of my knowledge.

Q You say you know these things?

A Judging by the same ore.

Q You mean by the process of calculation, that is the same?

A Yes, I surely do—that is the same ledge—well defined ledge, without question.

Q Well, at the time you went on this ground in May, 1921, to prospect, you knew of the existence of Quigley's Red Top Lode Claim?

A I surely did.

Q You recognized that as a valid location of Quigley's?

A I couldn't consider it anything else.

Q You consider it now a valid location?

A Quigley's? I surely do.

Q The Red Top?

A I surely do.

Q And you knew before you went on the ground to prospect the Silver King that it was a valid location?

A Yes.

Q The Red Top?

A I surely did.

Q If Quigley's location at that time was valid, how can you say that there was any known vein

within the boundaries of Grant's placer claim, known as the Hillside Bench? If Quigley made a valid location, wouldn't Quigley cut that part out?

(Mr. Roth objects to question as being irrelevant and calling for a legal conclusion. Objection sustained. Mr. Stevens takes exception which is allowed.)

Q Why didn't you locate the Silver King when you first went on?

A We wanted to do some work.

Q What for?

A To have a ledge in place.

Q You mean to discover a ledge in place?

A Yes sir.

Q You said, as I understand, that when you got to Roosevelt with the rest of the crowd on the 2nd of June 1921—1919—that you stayed around Roosevelt a few days. That is right?

A Yes sir.

Q And that you worked at the Aitken mine under Mr. Grant?

A Not then.

Q That's just what I wanted to know—you worked for the Commission a month first?

A To the best of my knowledge—an even month.

Q After that, did you work for Aitken?

A Yes sir.

Q On the hill above this property?

A The first work I done for Aitken was to drive pack horses—cayooses—then I went to the mine from Roosevelt.

Q Did you say that Aitken didn't have any tools to work with?

A No tools of any account, that I know of—they borrowed tools there—believe the tools we used were practically all borrowed, if not all. I know of two axes they had supposed to belong to Aitken or the Commission.

Q When Aitken sent his outfit up there, he sent it on board a boat—a steamboat—didn't he?

A Yes.

Q The same boat you went on?

A Yes.

Q Do you mean to say he went there and didn't take any tools?

A It wouldn't be possible.

Q That he would take his outfit in and wouldn't take any heavy outfit?

A There was some heavy stuff left at Roosevelt all summer.

Q All of it?

A Yes, all of it as far as I know—they might have had something up there possibly.

Q Aitken had a tent there—8x10?

A It might have been 8x10—it was very small.

Q But he had a tent?

A Yes.

Q Up hill?

A Yes.

Q Before he built the bunkhouse?

A Long before.

Q He put up some buildings, didn't he?

A Long after.

Q I didn't say when—I asked whether he did.

A Yes.

Q When you and Mr. Campbell started the hole that you claim to have sunk to bed-rock and deeper, Mr. Quigley was with you, wasn't he?

A When I started the shaft, you mean?

Q Yes, that day.

A Yes sir.

Q Mr. Quigley was there?

A He told me where to sink.

Q You and Quigley lined the place up and by taking a straight line down hill, agreed upon the place to sink? That is true?

A Yes sir.

Q And you had just—the first thing you did was to drive a driving shaft and put in some powder and blow out the surface? Was that it?

A Yes.

Q You and Campbell both worked there that day?

A Part of the day.

Q And you were—just had the flu and didn't feel very well and didn't go over a couple of feet that day?

A Not any more in the shaft.

Q In the shaft you started?

A We done a lot of other work around the shaft the first day.

Q You went down two feet the first day?

A We might have—it might have been more.

Q You said two or three feet?

A Yes.

Q How far down did you go the second day?

A I don't know.

Q Do you know the third day?

A I don't know, but to the best of my knowledge we were through the frost and a little more.

Q That would be about five feet?

A In that neighborhood—we put in some little timber and sodded around the shaft to stop the water coming in the shaft—coming in on one corner.

Q Did you ever have any experience in pounding your driving shaft down in ice and putting in a fuse and blowing it out?

A In ice—blasting ice?

A Yes.

A I couldn't say I ever did.

Q Don't you know as a matter of fact that a man can blast ice and take it out of a hole faster than out of virgin soil?

A He might.

Q You think he would?

A I couldn't say he would.

Q After you got down about seven or eight feet, you put on a windlass?

A About that.

Q Probably the second or third day?

A I daresay the third.

Q Well, you are pretty sure that you started to put your shaft down there on the 22nd of May?

A I couldn't be positive—I had no occasion to write it down.

Q Could it have been as early as the 15th day of May?

A Oh no.

Q Did you find any float in that hole at ten or twelve feet below the surface?

A I found a little.

Q It had no connection, in your judgment, with the vein you afterwards struck?

A Had no connection?

Q No.

A It was the same kind of ore.

Q It wouldn't rise above that—it rolled down hill in all probability from a vein above?

A It might have.

Q It was down deep enough so that it didn't fall off Aitken's wagon, wasn't it?

A It surely didn't.

Q That first day you started your hole, you say you noticed about twelve feet to the eastward of where you sunk there was an old hole?

A Yes sir.

Q And was it full of water or not?

A I wouldn't be positive whether it was full, but to the best of my knowledge, it was not full—it might have been down a foot or two.

Q But the water, as far as you recollect—the water was not even with the surface of the ground?

A No, there was sod and a little seepage wouldn't let it come quite to the surface on the lower edge.

Q You found at least one of the walls of that vein?

A Well, I found a small—some wall on one side.

Q You are satisfied in your own mind that it was mineral in place, was it not?

A Yes sir.

Q On account of having found a wall?

A I found some wall.

Q You stated that you examined some samples of rock that came from Eldorado Creek that were given you by Owen?

A I did.

Q And that you threw them out of the hole after examining them?

A I did.

Q How did he get them to you? Could he hand them to you?

A He couldn't reach them to me—just tossed them down.

Q You don't mean to tell how deep down you were?

A It would be possibly 10, 12 or 13 feet.

Q Was Campbell ever down in that hole, as far as you know?

A To the best of my knowledge, he never was after we got through the frost.

Q Now, in June 1921, just ten days after you had made your location, yours and Campbell's, you had a talk with the plaintiff, William Grant, at Roosevelt?

A Ten days after I made what?

Q Made location .

A I don't know.

Q You made your location on the 6th day of June 1921?

A Yes sir, to the best of my knowledge.

Q And you said you nearly reached Roosevelt

on the 15th of June, but went in the next morning, the 16th?

A Yes sir.

Q And at that time you had a conversation with the plaintiff, William Grant?

A Yes sir.

Q At Roosevelt?

A Yes sir.

Q Thirty miles away from this property?

A About that.

Q That William Grant said to you that he heard you had struck it rich, and that he understood you had struck it—or sunk in one of his (Grant's) holes?

A He said 'one of his holes' or 'in his hole'—I knew what he meant.

Q He was referring to this placer claim of his—the Hillside?

A I believe that was what he meant.

Q That is what you thought at that time?

A Yes.

Q And he was referring to your Silver King Mining Claim?

A Yes.

Q And that you then and there told him you didn't sink in his holes?

A Yes, certainly I did.

Q Was that all that was said about it?

A About this hole?

Q About the claim.

A Yes sir. It ended right there.

Q He made no objection or protest?

A None whatever.

Q Was anybody present beside you and he?

A Yes sir—Mr. Miller—known as “Cow” Miller.

Q Where is Mr. Miller now?

A I don’t know.

Q Have you seen him around town?

A No.

MR. ROTH: He is in the Tolovana.

Q The next time you saw the plaintiff was in June, about the 22nd, on this property?

A About the 22nd or 23rd.

Q That was when Campbell and Dalton were also present?

A Yes sir.

Q And Grant didn’t say anything and nobody said anything to Grant about this property?

A There was no conversation whatever.

Q But you saw the plaintiff about July 3, 1921, down on what you claim as the Silver King property?

A I said at the lower end of Silver King.

Q And that Grant was with the mail?

A On his way to Roosevelt.

Q And you had some conversation with Grant?

A Yes sir.

Q And Grant told you to keep off the Hillside Bench Claim?

A He did.

Q You and he had some words?

A Yes sir.

Q And that was about all that was said?

A That was all that was said with reference to keeping off the ground.

Q You never saw Grant between the time you first entered on the property until after you had located, did you?

A Ask the question again.

Q Did you ever see Grant, or did Grant ever see you, after you entered upon this ground to prospect, and the time you located it which was June 6th?

A I saw him June the 16th at Roosevelt, the first time after.

Q That was after you located?

A Oh yes.

Q I am talking about whether or not you ever saw Grant, or Grant ever saw you, after you had entered upon the ground to prospect and up to the time you located.

A I don't remember of seeing him.

Q You didn't see him?

A I don't remember of seeing him.

Q During all that time Grant was at the Landing, or Roosevelt?

A I don't know.

Q You don't know?

A No, I don't know—I knew he had been there or was supposed to have gone there.

Q You talked to Harry Owen on Eldorado Creek about August 1921, didn't you?

A August?

Q Wasn't it?

A Not that I know of.

Q When was it you talked to Harry Owen on Eldorado?

A It must have been the early part of October.

Q October 1921?

A Yes.

Q After you had been served with process in this case?

A Yes.

Q And Harry Owen stated that it looked bad for you and Campbell, whatever it was, for going down in Grant's hole?

A He said something about going down in a hole—it looked bad—or something to that effect.

Q You told him it didn't make any difference?

A Yes, that I couldn't see where it made any difference if we went down in some hole—I didn't tell him in Grant's hole, or any other.

Q You did say you led him to believe that way—that Campbell and Tobin did go down in some other hole?

A I led him to believe we went down in a hole—he believed I meant one of Grant's shafts. He was looking for information and I said that to him.

Q You afterwards saw Grant seven miles below at Bartlett's place?

A After when?

Q After he—well, after July 3rd when he told you to keep off the ground.

A Yes sir—stayed over night.

Q And he didn't say anything about this ground, and you didn't ?

A No.

Q There was no conversation?

A No conversation.

Q After that, on July 22nd or 23rd, you saw

Grant in the vicinity of this ground and you had no conversation with him?

A I had no conversation with him, no.

Q And the trouble that was had, according to some of the testimony in this case, between the plaintiff and defendant, Campbell, you didn't see at all?

A I did not see it.

Q You were down in the hole when it occurred?

A Yes sir, down in our shaft.

Q You say you saw a trespass notice, or trespass notices, before July 3rd on this ground?

A I wasn't sure what date.

Q Understood you to say it must have been the 1st or 2nd of July?

A I believe it was about that time—early part of July.

Q You didn't read them?

A I didn't read them.

Q How close were you to those notices?

A I couldn't say—might have been a few feet away.

Q You were working in the shaft at that time?

A Yes sir—not all the time—couldn't work all the time—couldn't get the powder smoked out.

Q How many notices did you see there?

A I believe two notices.

Q They were not very far away from where you were?

A Thirty or forty feet.

Q Why didn't you read them?

A I understood they were notices—they didn't interest me.

Q You understood they were Grant's notices?

A Yes.

Q You didn't care enough about them to even read them?

A No, I didn't go near them.

Q You say you were in—you were in Mr. Quigley's tunnel on the 10th day of May 1921, were you?

A I don't remember that I was.

Q Was it the 10th day of May 1921 that you saw Broker and Dalton and Owen?

A To the best of my knowledge.

Q And that was the day you and Owen had some kind of talk about the direction of Quigley's lode?

A That was all that was said.

Q That was the same day?

A The same day we spoke about the ledge coming down hill.

Q Then the next day, which would be the 11th day of May, 1921, in the morning you put out a prospector's stake?

A Yes sir.

Q About close to the place where you afterwards sunk your tunnel?

A No sir.

Q Where—about—did you put that stake?

A Way down hill a long ways.

Q How far from the place you sunk your shaft?

A I don't know.

Q About how far?

A Possibly 1000 to 1200 ft.

Q What was on that stake—any notice?

A There was some writing—I don't remember.

Q You wrote it?

A I did.

Q Did you write it after the stake was put in place or before?

A Before, if I remember right.

Q Before you put the stake in?

A Yes.

Q Did you drive the stake in the ground?

A No, tied it to a bush—the ground was frozen.

Q Tell us as near as you can what you wrote on that stake.

A Well, to the best of my knowledge, I claimed 1500 ft. up the hillside—mountainside—by 600 ft. in width, for prospecting purposes.

Q For prospecting purposes? Did you sign your name?

A Believe I did.

Q Did you sign Campbell's name to it?

A To the best of my knowledge—both names.

Q Was that below the lower line of—below the lower side line of Grant's placer claim there?

A Down hill?

Q Yes—that you put the stake.

A Yes.

Q Was it on this claim that you refer to as being Hamilton's claim, south of Grant's claim?

A I believe it is on Hamilton's ground.

Q Well, was it within the boundaries of the claim immediately below the Grant lines, or was it on the placer still farther down?

A I believe a little further down on the next claim.

Q Where was that prospecting stake that you put in and have just described with reference to the lower end line of the Silver King Lode Claim?

A It lacked 200 ft. of being as far down the hill as it is now.

Q The prospecting stake was not as far down as your lower end line now is? That is right?

A Yes sir.

Q How much did it lack? What is the distance?

A I don't know—I didn't measure.

Q Tell us as near as you can about what distance.

A It might be 200 ft. farther now than then.

Q In the neighborhood of 200 ft.?

A Yes.

Q As I understand you, you didn't do any prospecting—any sinking down below where you say you put in that prospecting shaft?

A I didn't put in any prospecting shaft.

Q I mean prospecting stake.

A No.

Q That is all you did—put in a stake with a notice on it?

A Right then, that was all. Done some work along the foot of the hill to see if there was any gravel or float—different places—and afterwards went up near to where we now have the shaft.

Q You have been up to the stakes and examined them—of the Troy Placer location that Mr. Campbell has located covering part of the property in dispute in this case?

A You ask—had I been there?

Q Yes.

A No sir, I don't know where they are.

Q Did you ever examine the location notice?

A No sir.

Q Didn't you say you went to the Recording Office there to find out about that location—went in to—(interrupted)

A I went in to see Mr. Wilson.

Q But you didn't examine the records?

A To the best of my knowledge, I didn't

Q You heard me read the location notice yesterday?

A I did.

Q It covers—it practically covers all of the Silver King location that is above this lower blue line of the placer claim, does it?

A Yes, it does.

Q It covers other parts of this placer claim claimed by Grant?

A It does.

Q It covers the discovery shaft of the defendants, Campbell and Tobin, does it?

A I believe it does.

MR. STEVENS: You may take the witness.

Re-Direct Examination

BY MR. ROTH:

Q Referring to this placer location made by Mr. Campbell, about which Mr. Stevens has just now asked you—I will ask you to state whether or not you and Mr. Campbell are partners generally over

there, or each of you own ground separately that you and he are not interested in.

A Yes sir.

(Mr. Stevens enters objection to the question on the ground of not being proper re-direct examination, and asking for legal conclusion of the witness, also being leading and suggestive. Objection over-ruled. Exception taken and allowed.)

Q What is your answer?

A Yes sir.

Q You own ground that he is not interested in over there?

A Yes sir.

Q Does he own ground you are not interested in over there—down on Moose Creek?

A I believe he staked something down on Moose Creek which I don't pretend to be interested in in any way—am not positive.

Q On Bear Creek?

A Yes.

Q Is this the only piece of ground you boys are partners in?

A Yes sir.

(Mr. Roth states that he over-looked asking this witness about one matter when he had him on examination in chief.)

Q After you made the discovery in that hole which is known and designated as Campbell and Tobin's discovery shaft, what, if anything, did you do on the ground in the way of staking or marking the boundary lines?

A We staked it.

Q Just in detail state just what was done.

A You mean after discovery?

Q Yes.

A I put up a discovery post.

Q Where?

A Right near the corner of the shaft.

Q What kind of a post was that?

A It was a spruce post, to the best of my knowledge.

Q About what size?

A It might have been four inches or a little less.

Q In what?

A Diameter.

Q How tall?

A It might have been 4 ft. over the ground.

Q Did you write anything on it?

A Yes sir.

Q Just state what you wrote on it.

A "Discovery post. Discovered June 1st, 1921, rock in place." and I believe I put my name and Mr. Campbell's name on the discovery post.

Q Was anything there showing what you claimed?

A On the discovery post?

A Yes.

A Only 'rock in place.'

Q I mean what you claimed—the amount of ledge you claimed—was that on the discovery post?

A On the initial post.

Q Not on the discovery?

A To the best of my knowledge.

Q After that what did you do?

A The next thing we did, we worked there for six days before we staked it to define a ledge—to see whether we had anything to stake—worked continuously six days.

Q Then what?

A Staked it on the 6th day of June.

Q What was the first thing—what was the first stake?

A The initial post—a good sized stake, probably five inches in diameter.

Q Was it squared?

A Squared somewhat—blazed on four sides.

Q Where was that stake set?

A At the lower end of the Red Top Lode, joining Mr. Quigley's stake—his center end stake, and tied with a wire.

Q That would be at the upper end of the Silver King?

A Yes sir.

Q What, if anything, was written on that stake?

A Notice of location, claiming 1500 ft., to the best of my knowledge, northwesterly.

Q How? I didn't understand?

A The initial post—notice on this initial post claimed 1500 ft. in this direction—northwesterly.

Q That isn't northwesterly—it is southwesterly. What did you have on the stake?

A I will tell you—I claimed 1500 ft. in this direction, whatever it may be, by 600 ft. wide—300 ft. on each side of the stake.

Q Did you say down hill or—(interrupted)

A I said 'whatever direction it is' southwesterly direction.

Q What is the next thing you did?

A Put up those—(interrupted)

Q What is the next stake—give us the first one you set.

A As I remember, Mr. Campbell put up this corner post which would be the northwesterly corner, and I went over and put up the opposite corner—also tied it to Mr. Quigley's corner post.

Q What was the one you put up?

A Corner post of the Silver King Lode Claim.

Q Did you give it a number, or did you designate what corner post it was?

A Yes sir.

Q What did you say?

A North—southeasterly—(refers to note)—northeasterly corner, the way you have the plat.

Q That is the way the map shows it—northeasterly. What is the next thing you did?

A Went down and staked the other end.

Q Which one did you put up first?

A The center end.

Q What kind of a stake?

A A stake about four to five inches square.

Q How high?

A Four feet above the ground after drove in the ground.

Q Did you write anything on it?

A Yes sir. "Center end of the Silver King Lode

Claim" and to the best of my knowledge, the date and our names.

Q Did you show what you claimed?

A Yes sir.

Q What?

A Claimed 1500 ft. up hill by 300 ft. on each side of the center end stake.

Q What was the next stake you set after that?

A On up Moose Creek—it would be the southeast corner stake of the Silver King.

Q What kind of a stake?

A A stake about three to three and a half inches square.

Q How high?

A Four feet over the ground.

Q Did you write anything on it?

A Yes.

Q State it.

A "Southeast corner of the Silver King Lode Claim."

Q Anything else—names?

A I don't know that I did—I probably did.

Q You don't remember?

A No.

Q What was the next stake?

A I went down hill and cut a line through the bushes—down to the other corner—cut a right of way through and then put up a stake.

Q What kind of a stake?

A About three to three and a half inches in diameter.

Q What corner did you put it on?

A The southwest corner.

Q What writing was on that stake?

A "Southwest corner of the Silver King Lode Claim."

Q Was anything else put on it?

A I wouldn't be positive.

Q What size stake?

A Three to three and a half inches. It was up on a gravel pile.

Q How high above ground?

A It might have been four feet.

Q Was it more than three feet?

A Yes sir.

Q Were there any stakes put on the side lines of that claim?

A Yes sir.

Q How many?

A To the best of my knowledge—one on each side.

Q Did you ever go to those stakes?

A Only to one.

Q Which one?

A On this line. (Indicating)

Q That would be the westerly line?

A Westerly line.

Q Did you see anything written?

A Just "side line stake."

Q Of what?

A The Silver King Lode. There were two stakes on this side line—Mr. Campbell put up one and I the other.

Q Where did you put one up?

A Down near the woods and brush to show there was a line there.

Q What writing was on that stake?

A "Side line of the Silver King Lode Claim."

Session 2:00 P. M. February 7, 1922.

J. L. TOBIN, one of the defendants, re-called as witness in his own behalf, being heretofore sworn, testified:

Further Direct Examination.

BY MR. ROTH:

Q Mr. Tobin, are you a citizen of the United States?

A Yes sir.

Q Where were you born?

A New York.

MR. ROTH: That is all.

MR. STEVENS: That is all.

WILLIAM J. CAMPBELL, one of the defendants, recalled as witness in his own behalf, being heretofore sworn, testified:

Further Direct examination

BY MR. ROTH:

Q Mr. Campbell, are you a citizen of the United States?

A Yes sir.

Q Where were you born?

A In the state of Iowa.

MR. ROTH: That is all.

MR. STEVENS: No cross examination.

JOHN A. DAVIS, called as witness for the defendants, being duly sworn, testified:

Direct Examination

BY MR. ROTH:

Q What is your name?

(Mr. Davis asks permission to address the Court, which is granted.)

(Mr. Davis addressing the Court)

Acting under instructions from the Secretary of the Interior—(Interrupted)

(Mr. Stevens asks if this is in answer to any question and Court states that Mr. Davis has permission to address the Court.)

—I am instructed to explain to the Court that employes of the Bureau of Mines are without authority in law to enter or inspect mines and mining property, and that this can only be done with the consent of the mine owners or operators, and that if employes of the Bureau of Mines are required to give evidence in Court, mine owners and operators will cease to permit them to enter their mines, and as a result, the chief purpose of the Bureau of Mines will either be hampered greatly or entirely frustrated, the purpose and aim of the Bureau being to make such scientific investigations as will avoid and prevent mine accidents, increase efficiency, and prevent waste in mining. I am instructed to inform the Court that, frankly I do not intend to place myself in contempt of Court, but that I have been instructed under the authority of the Secretary of the Interior of the Federal Government, to ask the right of exemption from

testimony, as a protection of the Government's interests, it being manifestly inimical to the Government's interests, should employes of the Bureau of Mines be called upon to testify in mining litigations and be required to state testimony that they have received of a more or less confidential nature from mine owners at the time permission was given them to enter their property.

(The Court asks counsel generally what is the testimony required of this witness.)

MR. ROTH:

Generally, I expect to ask him concerning his investigation of the lode in question—his personal investigation of the lode in question.

MR. STEVENS:

You mean of the Quigley location or of the defendants' location? I don't concede that they are the same lode.

MR. ROTH:

I think the lodes are in question—concerning his investigation on the Quigley Red Top Lode Claim—his scientific investigation of same, and tracing the same through the country, and for the purpose of showing the result of his investigation upon that line, if the Court please.

MR. STEVENS:

If the Court please, it seems to be conceded—
(interrupted)

MR. ROTH:

I further wish to state this—that I do not intend to ask the witness anything about any matters that he has obtained confidentially from any one—

what he has which is simply—can be given without violating any confidence or trust of any kind or character.

MR. STEVENS:

It appears from the testimony of both sides in this case that Quigley's quartz location known as the Red Top Quartz or Lode Claim, is a valid location, and it is admitted by stipulation in substance that these defendants discovered mineral in place at a depth of 40 ft. or more in their shaft, concerning which they have testified, and unless this witness can testify to the actual existence of a lode or vein of rock, bearing mineral, in place within the boundaries of the placer as it existed—as the boundaries existed in May 1921, the testimony of the witness would be immaterial, absolutely. I say, unless he can testify to the existence of a lode or vein in place, as distinguished from any theory or belief or calculation of any kind, any observations he might have made outside of the boundaries of plaintiff's placer claim, as the boundaries existed at the time defendants entered, are absolutely immaterial in this case.

COURT: Mr. Davis, was the examination you made of this lode known as the Quigley lode, made in your official capacity as a representative of the Bureau of Mines?

MR. DAVIS: It was, and the entire investigation I made of the surrounding country was made in the same capacity.

COURT: I feel frank to say that it would be causing undue embarrassment to the office of the Bureau of Mines to require any of them to testify as

to any knowledge gained by them with reference to any question in controversy in this case. It would tend very greatly to lessen their usefulness as officers in that Bureau, and for that reason the testimony of this witness will be excluded, if it is for the purpose stated by counsel.

MR. ROTH: I wish to make an offer of what I expect to prove by this witness. We expect to prove by this witness that in the first half of the month of September 1921, he investigated the lode or vein which runs through the Red Top Placer—I mean the Red Top Lode Claim, of J. B. Quigley, and traced the same ledge across Moose Creek for a distance of about half a mile from the Quigley tunnel in a south-westerly direction from the same, and that the strike as shown crossed the discovery shaft of these defendants, and that the ore taken from the discovery shaft of defendants is the same in character and appearance as the ore taken from the lode on the Red Top Claim, and that across Moose Creek in a south-westerly direction from the tunnel of J. B. Quigley on the Red Top Lode, in a straight line from the strike on the Red Top, a lode was found by John Hamilton and lessees, which is similar—that is in a vein which is similar and containing ore similar to the vein and ore on the Red Top Lode Claim.

MR. STEVENS:

To which offer the plaintiff objects to the testimony upon the grounds that the same is wholly immaterial, incompetent in this case, does not tend to prove any issue of law, raised by the pleadings, or otherwise, and at the same time it is objectionable

and inadmissible for the further reason that the statement of counsel assumes a fact that is not proven in this case—that the vein or lode in question runs through the Quigley Quartz Mining Claim, which fact is further immaterial.

COURT: Objection is sustained and offer denied.

MR. ROTH: It does not yet appear what official position the witness holds.

COURT: I think it would be proper to ask those preliminary questions first before the witness is excused. It does not yet appear in evidence what official position he occupies.

MR. ROTH: (to Mr. Davis)

What official position do you occupy, Mr. Davis?

(Mr. Davis asks permission to again address the Court which is granted.)

MR. DAVIS: (to the Court)

In answering this question, do I jeopardize my claim for exemption?

COURT: No.

MR. DAVIS: (to Mr. Roth)

Superintendent of the Alaska Station of the United States Bureau of Mines.

MR. ROTH: And what—have you any profession?

MR. DAVIS: I have.

MR. ROTH: What is your profession?

MR. DAVIS: Mining Engineer.

MR. ROTH: That is all.

MR. STEVENS: Mr. Davis, did you hold the position that you have mentioned at the time that you visited the claim of Joe Quigley in the Kantishna

Mining Precinct, Alaska?

MR. DAVIS: I did.

MR. STEVENS: That is all.

MR. ROTH: That is all.

J. B. QUIGLEY, called as witness for defendants, being heretofore sworn, testified:

DIRECT EXAMINATION

BY MR. ROTH:

Q Mr. Quigley, when did you locate the Red Top Lode Claim?

A I don't remember the exact date I located it.

Q Defendants' Exhibit "D"—I mean Plaintiff's Exhibit "D"—which is a certified copy of a notice of location of the Red Top Lode Mining Claim, states that "on the 7th day of August, 1920 I discovered a lode of rock in place bearing gold, silver and other valuable deposits which lode I named the Red Top Lode." Now, from that, I will ask you to state if that is the correct date—the 7th day of August, 1920, as appears in this notice of location.

A I think it is. If that is a copy, it certainly is the date.

Q With reference to the date that that certificate bears, when did you make your discovery on that location?

A When did I make discovery on that location?

Q Yes—with reference to that date.

A I had the discovery dug out on that location before I made it.

Q Before you filed the certificate?

A Yes, and before I staked the ground.

Q About when was it with reference to the time that you have set forth in that notice of location—when was it you first made discovery within the exterior boundaries of that claim—about how long before?

A Perhaps a day or two before—before I located it.

Q Now, if you made the location at your point—I mean after you located the ledge at the point of your discovery, where did you next do any work on that ground?

A Where next did I do work—

Q Yes, on that lode.

A Well, what I used for discovery—I made discovery down hill and worked up hill—

Q But that wasn't the first place you found the ledge?

A No.

Q Where was it you first found the ledge?

A That was probably half way up the hill, as near as I could figure, between my various holes.

Q Say, between the present mouth of your tunnel and what you call your discovery—how far was that? About half way?

A Something in the neighborhood of that.

Q How many places along there did you open that ledge?

A In four different places, counting the tunnel, I was positive I had the lead in place.

Q How did it line up—those four places?

A The four places lined up very accurate—you couldn't call them a direct line, but on a general

course they was very accurate—as accurate as you could expect to find them.

Q The difference in elevation makes the difference in line—does it not—on the apex?

A Well, the difference in the slope of the hill would make a little difference in line.

Q And that difference is due to the dip of the vein, is it not?

A Yes, naturally due to the dip of the vein.

Q If the vein was perfectly perpendicular and straight, the erosion would not change the course, would it?

A No, I wouldn't think it would.

Q But if the vein dips and the hill washes off, why the line of the apex would not be a straight line?

A I don't know how it is. We always figure if the hill dips—if the dip of the lead is the same in depth—why it should, if the dip of the hill is the same slope, it should be a direct line even then.

Q That is true—you are right.

A That is, provided the vein runs true, but so far I fail to find a wall running, you might say, in a true line—the general strike would be on a certain course, but on the wall of the lead there is more or less variation.

Q How big a vein is that?

A It varies from—I cross-cut it in one place where I think it would measure more than 20 ft. if cross-cut straight across—at least 16 ft.—on the one wall I haven't got through what I consider the ledge matter yet.

Q What kind of vein is it, if you know?

A What do you mean?

Q Is it a fissure—I mean a true fissure vein?

A It is what I would call a true fissure vein and what geologists term it.

Q Do you remember when Campbell and Tobin started their shaft on the discovery—on the claim immediately adjoining yours to the southerly side?

A I remember they started.

Q You were there?

A I was looking at the job that morning.

Q At that time how far had this lode been traced, to your knowledge?

A Well, I couldn't tell you as I never measured the distance between holes—I may have measured it some time too—but the distances have slipped my memory.

Q Do you know of that lode being up to that time—being discovered in any other place off of the Red Top?

A Why I don't know of that lode—but there was a lode discovered on the opposite hill where quite a few in conversation thought it might be a continuance of mine.

Q On the opposite side of Moose Creek?

A On the opposite side of Moose Creek.

Q How did it line up, taking the difference in elevation in consideration in different conditions?

(Mr. Stevens enters objection on the ground of being wholly immaterial. Court understands they are talking about the Quigley lode, and Mr. Stevens states they are talking about the vein in the opposite

hill. Court over-rules objection. Exception taken and allowed.)

Q How did the point of that discovery compare with the line or with the strike of the lode on the Red Top, taking the difference in elevation into consideration?

A It is pretty hard for me to state that because not ever taking the course of the vein with an instrument, it is pretty hard to get it.

Q Were you ever present on the ground when any mining engineer did take the course?

A I was present on the ground when Mr. Hamilton got—and Mr. TenEych and I believe it was Mr. Connelly—had Mr. Davis take the strike of the lode and to see if it compared to where they were looking—where they made discovery on the opposite hill.

Q What was the result of that?

(Mr. Stevens enters objection on the ground of not being the best evidence. Objection sustained. Mr. Roth takes exception which is allowed.)

Q That was Mr. John A. Davis who you refer to?

A Yes sir.

Q Did you ever see any of the ore that came out of that prospect across Moose Creek by TenEych, Jack Hamilton, and who else?

A A man by the name of Connelly.

Q Did you ever see any of the ore?

A I never did. They brought some pieces of ore several times, but I don't know whether they were from that place or where they came from.

Q Along on that same strike on the other side of Moose Creek, have you any location or locations?

(Mr. Stevens enters objection as being immaterial. Objection over-ruled. Exception taken and allowed.)

Q On the other side of Moose Creek, which would be the southerly side—I don't know whether that is the right point of the compass, but that is what I am going by on this map—but on the other side of Moose Creek from the side on which the Red Top Lode Claim is situated, have you any quartz claim or quartz claims?

A Yes sir, I have two.

Q Have you made any estimates to ascertain whether or not they are on the strike of this lode on the Red Top?

(Mr. Stevens enters objection, stating that the law is well settled that you cannot arrive at the existence of a lode claim within the boundaries of any particular claim in dispute by estimate, so if he made any estimates or has any theories, or believes in the existence, it is absolutely immaterial. Objection over-ruled. Exception taken and allowed.)

A From the strike of the lode on the Red Top, in lining up across there, by figuring the depth of the lode, the location I have got on the opposite hill—and considering more of an elevation than on that side of the creek, and by figuring the difference in the dip of the lead as it would climb the hill on the opposite side—it would seemingly line up practically the same place, as near as I could tell without instruments.

(Mr. Stevens moves that answer be stricken out. Motion over-ruled. Exception taken and allowed)

Q How much experience have you had over in that Kantishna country there in prospecting and locating lodes?

A I think it was—I think the year 1911, I started working on lodes, and I used to work—I think it was the year 1911 I started in—and the first few years I worked in the placer in the summer time during placer season and worked on lodes in the winter—the last four years have worked continuously on lodes.

Q After that you have been prospecting all the time?

A No, not prospecting all the time.

Q On the day that Campbell and Tobin started their discovery shaft there did Tobin come to see you?

A He did.

Q Just tell the jury what you and Tobin did.

A Well, as near as I can remember, he came up in the morning and I was just starting to sharpen steel, and he asked me—(interrupted)

(Mr. Stevens objects to any conversation unless the plaintiff, Grant, was present. The Court instructs Mr. Quigley that the question is what he and Tobin did, not what was said. Objection is sustained)

Q Just state what you did—the two of you together—without relating any conversation.

A Well, if it is just what we did. Mr. Tobin started to work on the hole and I started to sharpen my steel in the shop.

Q Did you and Mr. Tobin go up to any of the holes?

A We did a little later on.

Q Did you do any siting or lining?

A We did.

Q Did you point out any place where you thought the line run?

(Mr. Stevens enters objection to question on the grounds of being leading and suggestive. Objection sustained.)

Q Just state what all you did, Mr. Quigley, without relating any conversation.

A Well, I didn't help him sink the hole at all—the only thing I did was sharpen my steel.

Q Very well.

A I think I had some picks and drill I had to sharpen that morning.

Q Where did they start to sink that hole?

A They started to sink the hole a short ways from my center end stake.

Q With reference to the line of holes in which you opened the lode on the Red Top—where did they start that shaft with reference to that line?

A Well, where they started the shaft, if I had been attempting to locate the lead below me, I would have started myself.

(Mr. Stevens objects to answer on the grounds of not being responsive to the question. Objection sustained.)

Q With reference to that line of the holes upon which you had opened the ledge, where did they start that discovery shaft?

A It was practically on line.

Q I will ask you to state whether or not you saw them commence their work there?

A I did.

Q Did you see any hole in close proximity to that shaft they started at that time?

A As I remember, there were two holes—I never paid much attention outside of my own work—as I remember, there were two holes a very short distance from where they started..

Q Now, at the point where they started that shaft at that time, state whether or not that is the same shaft they continued to work in.

(Mr. Stevens enters objection to the question as being leading and suggestive. Objection overruled.)

Q Do you know whether or not the shaft that you saw them start to sink is the same shaft that they kept on working in until they got to bed-rock?

A Yes sir, the same shaft.

Q Do you know that they did not go into another shaft or hole started on that ground?

A I know they did not.

Q Do you know William Grant?

A I do. That other question you asked if I knowed whether they went into another hole—I don't know, they might have went in and taken a look, but I know the shaft they started was the shaft they went down in.

Q You know they didn't work out of any other?

A I know they didn't.

Q Do you know a man by the name of Sandy Burr, known as 'Big Sandy'?

A I do.

Q In about the month of August or September

1920, while you were working on the Red Top Lode Claim and in a hole on that lode, or in a hole which is now on that lode, did you have the following conversation with William Grant in the presence of Sandy Burr, known as 'Big Sandy'? Did Mr. William Grant ask you what you was doing and did you reply, "I dug up a pretty nice looking prospect," and did you say to him that you was looking for him to come along as you wanted to get a building site on the flat below on his placer claim, and did he in reply say to you, yes, you could get a building site if you would turn that work in as representation work on his placer, and did you then say to him that you don't think—did not think it was on his placer at all, and did he in reply say, "Oh yes it is, don't you see that stake up there,"—pointing to the stake which now stands above your house. Did you have such a conversation in substance with him?

A I did.

(Mr. Stevens enters objection on the ground that the same question was not put to Mr. Grant. Objection over-ruled. Exception taken and allowed.)

Q Did you, not long after that conversation, and before O. M. Grant did the assessment work on the Hillside Placer Claim, while you were working on the lode somewhere on the Red Top, meet William Grant, at which time the following conversation took place? You said, "If you would make me a bill of sale of the placer claim, I would keep the representation work done on it, as I understand that you located it for warehouse purposes anyway" and to which he replied, that he couldn't do it as he was working for

Tom Aitken and that he located it for him and that it belonged to him, and that you would have to see him about it. Did you have such a conversation in substance with him?

A I did.

Q How much experience have you had in quartz mining and quartz prospecting, Mr. Quigley?

A I have been working at it for several years.

Q Did you ever work on quartz before you went into the Kantishna?

A I never did.

Q I will ask you to state, Mr. Quigley, whether or not that lode that you had discovered and opened on the Red Top Lode Claim was, on the 11th day of May 1921, a well known lode south—in a southerly direction, from the north line of the Hillside Lode—Placer Claim.

(Mr. Stevens enters objection on the grounds that, first, question calls for an opinion and conclusion of the witness; second, no time has been fixed by the question as to the boundaries of the northerly side line of plaintiff's Bench Claim. Objection overruled. Exception taken and allowed.)

Q South of the northerly line of the placer claim—(interrupted)

A I never knew where the northerly line of the Hillside Claim went through.

Q Why didn't you know that?

A Because I never surveyed it out at all to see where the lines were drawn.

Q At a point where your tunnel was located, and from there northerly on the lode, I will ask you to

state whether or not on the 11th day of May, 1921, that was a well known lode in that community.

A Yes, it was considered as a well known lode in that community at that time.

Q Did you see any of the ore that came out of this discovery shaft of the defendants, Campbell and Tobin?

A Did I see any of it?

Q Yes.

A Yes sir.

Q From your knowledge of the ore that came out of this discovery shaft and your experience in following that lode between the point of your shaft—I mean your tunnel, the mouth of your tunnel, and the point you call your discovery—what would you say with reference to the lode opened up in the discovery shaft of these defendants being the same lode that you had followed above?

(Mr. Stevens enters objection to the question on the grounds that witness has not shown himself qualified to give expert testimony—it being merely an opinion, not based upon any facts excepting what he might merely draw from the appearance and location of these two places where the vein was uncovered, there being a distance of some 200 ft. between places; no testimony given to show that it is the same vein and Mr. Roth's question assumes it is the same vein by calling it 'this vein.' Objection over-ruled. Exception taken and allowed.)

A Judging from the ore, I would think the ore is practically the same as the ore I have got in my holes in different places—that is, in appearance.

Q And from all of that, what would you say upon the subject as to whether or not it is the same lode?

(Mr. Stevens makes objection on the ground that witness is not qualified to give expert testimony. Objection over-ruled. Exception taken and allowed)

A If I had been looking for it myself and picked it up down there, I would have thought it was on the same lode.

(Court states that answer is not responsive.)

Q From all that experience you had and comparing of the ore, what would you say as to whether or not it is the same ledge?

(Mr. Stevens makes objection on the ground that it is immaterial what he would say. Objection over-ruled. Exception taken and allowed.)

A I would say—(Interrupted)

(Mr. Stevens makes objection on the same ground as the last objection.)

COURT: What is your answer?

(Mr. Stevens makes further objection which the Court over-rules. Exception taken and allowed.)

A It is my opinion that it is the same ledge.

(Mr. Stevens makes a motion that the opinion of the witness be stricken out as immaterial as he has not shown himself qualified to give expert testimony. Motion denied. Exception taken and allowed.)

Q Were you on the ground which is now claimed to be within the exterior boundaries of the Hillside Bench Placer Claim when William Grant on about the 19th day of April, 1920, went to what is claimed to be the southeasterly corner of that claim—to a stake of Jack Hamilton's on the Horseshoe Placer

Claim—were you somewhere on that claim at that time?

A Yes, I was on the claim. That was when he was locating?

Q Yes.

A Yes, I was there.

Q Was Jack Hamilton there?

A Yes.

Q Did you go with him to what he calls his initial stake?

A No, I don't think I did.

Q How were they traveling there at that time? Did they have snow shoes on?

A Yes.

Q How many pair of snow shoes were there?

A Two pair.

Q They had two pair of snow shoes?

A Yes.

Q Where were yours?

A Mr. Grant used them when he went over to the stake.

Q Where were you when he went over to the stake?

A I started to go across but the traveling was too tough so came back.

Q Did you go with him down to the other stake of Hamilton's which is now called the southeast corner of the Hillside Bench Placer?

A Jack Hamilton and I went over there, as near as I remember—had a pair of snow shoes apiece—it was quite a ways from the trail.

Q Did William Grant go with you?

A Not that I remember of.

Q How was the snow?

A The snow was quite deep.

Q Did anybody write on that stake at that time?

A There was some writing done.

Q Who did it?

A I couldn't say who did the writing.

Q Whether it was yourself or Hamilton?

A Whether myself or Hamilton.

Q Do you know what was written at that time?

A No, I don't.

Q Did you see any of the other stakes set of that placer claim?

A Yes sir, I saw another stake set—set above where my house stands.

Q When was that?

A It was put up the same day the other writing was done.

Q Tell where that stake was got and what was done with it.

A On the road that leads up the hill, when we come out Mr. Grant had an axe with him and there was a pole laying there—they had likely drove up a load of timber going up hill—and Mr. Grant made a stake, hewed the sides, and packed it up hill, and when he got above the house he put it in some rocks—I helped throw the rocks when he put the stake up.

Q Did he write anything on it?

A I think he wrote on it.

Q You don't know what it was?

A No.

Q Did you ever read it?

A Not that I remember of, I never read it.

Q That was the same day that he went to the other two stakes of Hamilton's?

A Yes sir, the same day.

Q What became of Hamilton?

A He went home.

Q Which way?

A Straight across to his cabin—went down a steep hill.

Q Over to Moose Creek?

A Yes, over to Moose Creek.

Q Did you ever see the fourth corner stake of that claim?

A I saw it in the latter part of the summer, staked over on the ridge of the hill.

Q The latter part of what summer?

A Last summer.

Q When did you first see that stake?

A I don't remember the date.

Q But the latter part of the summer?

A Some time in the summer—it may have been early in the summer I first noticed it—was told it was Mr. Grant's—I don't know to date that is his corner stake, any more than I was told it was his corner stake.

(Mr. Stevens asks that the answer be stricken out and the Court rules that it be stricken out.)

Q Mr. Quigley, do you know the elevation of the mouth of your tunnel above Moose Creek?

A Mr. Davis—(Interrupted)

Q Never mind that—did you have the elevation

taken yourself for yourself?

A No.

Q What would you say, from your observations there, about what the elevation of that tunnel is above Moose Creek?

(Mr. Stevens objects to what he would say, first, because he supposes he intends to ask for his opinion, which is immaterial; second, because witness has already stated he hadn't had the elevation taken for himself. Objection sustained.)

MR. ROTH: You may take the witness.

Cross Examination

BY MR. STEVENS:

Q Mr. Quigley, I call your attention to plaintiff's Exhibit "A", which is this map—the point down—the place I point to here called No. 1 post of Grant's Hillside Placer Claim has been identified by other witnesses as being the initial stake. Do you know about that location on the ground?

A I saw it at a distance.

Q That is the same point where you saw Mr. Grant and Mr. Hamilton in about April 19, 1920, is it not?

A Judging from the map, it seems to be.

Q What I want is to identify that particular point

A Yes.

Q Going in an easterly direction over to the southeasterly corner of the Hillside Placer Claim as designated on this map, you find corner called corner No. 2. That is the place you refer to as being on Hamilton's corner?

A Yes sir.

Q That is the place you say where you and Hamilton went there and you are not quite sure that Mr. Grant went while you were there?

A Yes sir.

Q Now corner No. 4 is above your house and designated as Corner No. 4, being the northwest corner of Grant's Hillside Claim—placer claim—that is the same corner you have just testified to as assisting Grant in piling rocks around the stake to create a monument?

A Yes—no, didn't create a monument—stuck it in the cliff.

Q To establish the corner?

A Yes sir.

Q You say at or about that time you didn't see a stake in the northeasterly corner at or about the point called post No. 3 on that map?

A Yes sir—I never saw it at that time.

Q That is the corner, or about the place where you say you saw a stake there about the latter part of last summer?

A Yes sir.

Q Did you ever see a stake there prior to the latter part of last summer?

A Not to notice it—never remember.

Q You built your house after April 1920—did you not? After Grant had located his claim?

A I built in January I think it was—know it was very cold weather.

Q What year?

A 1920, I think it was.

Q 1920 or 1921?

A I guess it would be 1921.

Q You built your house some time after Grant located his placer claim, did you not?

A Oh yes.

Q There is a place indicated on the map here as "Q's residence" do you see that?

A Yes sir.

Q According to the map, that would be located a little less than 660 ft. above this initial post. Is that about the proper location of your residence?

A It is about the proper location.

Q Do you remember of having a conversation with Mr. Grant in regard to the Hillside Bench, or the line of the Hillside Bench, before you built the house and while you were excavating for the foundation?

A No sir, I did not.

Q Did you ever have any conversation with Mr. Grant about the location of your house with reference to his claim, before you actually built the house?

A Yes sir, I did.

Q How long before you started to build the house?

A It was when I asked Mr. Grant—(interrupted)

Q When was it—about?

A It was some time—I can't tell just the date.

Q I don't care for the date—some time about.

A It was some time before snow come in the fall—was asking him about it so I could grade out before

the surface of the ground froze so it wasn't such hard grading.

Q In the fall of 1920?

A Yes sir, I think it was.

Q Had you started to excavate at that time when you had that conversation?

A I don't remember whether I had started to excavate or whether I hadn't.

Q Do you think it might have been November 1920?

A I think it was before November.

Q Do you know whether or not it was before the time O. M. Grant sank a number of holes down here in the same vicinity and below where Campbell and Tobin's shaft is?

A I think it was before Grant started.

Q You mean O. M. Grant?

A Yes.

Q It was before O. M. Grant started?

A Yes sir.

Q Then if O. M. Grant started on the 3rd of November, it was before that?

A It was before, yes sir.

Q Had you started to excavate before you had a conversation with Grant?

A That is what I say I don't know—I may have started to excavate before.

Q Did you ever measure between the initial stake of Grant's and your house?

A Yes sir, I did—I measured it roughly.

Q And what measurement did you take—did you—state whether or not you intended to locate above

the line of the bench claim.

A I intended to—I was measuring to get the distance—I intended to build higher up, but it was not convenient and had to come down.

Q You didn't intend to interfere with the boundary lines of Mr. Grant's placer claim at that time?

A I intended to build inside of the placer claim line if I could get permission. I asked him for permission.

Q You asked him for permission to build at the place where you did build?

A I first asked him if I could have a building site down further on the flat, and afterwards he told me that he was—at first he had asked me to turn this in for assessment work, and after I asked him he referred me to Mr. Tom Aitken. I told him, I had a conversation with him one day, and I told him I understood—it had been rumored—that he had located—I don't know whether I asked him or he said he had located it for a building site—but I told him if he would give me a bill of sale I would go down and do the assessment there. So when Mr. Aitken come I asked him about the building, and also for a dump.

Q Didn't you tell Mr. Grant at some time before your actual building of your residence there that that particular point where your residence now stands was not on his placer claim?

A I remember telling him at one time I didn't think it was on the placer claim.

Q That was because you hadn't measured 660 ft. up from the initial stake?

A I don't think I had measured at that time.

Q Isn't it true, according to this map, Mr. Quigley, your residence is below the 660 ft. point?

A According to this map, yes.

Q Isn't it true that at the time you built there, you tried to keep outside of the boundaries of the placer claim, as claimed on stake 660 ft.?

A At the time I built there I had asked Mr. Aitken for permission to build—had it partly graded out and asked Mr. Aitken for permission to build and he told me to build—I asked about the dump at the same time he told me to build.

Q You knew the claim had been located by Mr. Grant?

A Sure, I did.

Q You saw Mr. Grant's name on the stakes?

A Yes sir.

Q Didn't you tell Mr. Grant that the place where you built your residence was not within the boundaries of his placer claim?

A I remember I told him I didn't think it was—I didn't think it was at that time.

Q Isn't it true at that time that you had in mind, as a matter of fact, that the claim was, or should be, 600 ft. wide instead of 660 feet?

A No, I think I had in mind 660 feet.

Q You had been engaged in quartz mining?

A Yes sir.

Q You knew a quartz mine should be 1500 ft. along the vein and 600 feet wide?

A Yes sir.

Q Didn't you get the width of the quartz mine confused in your own mind and come up here 600 ft.

instead of 660 ft., and that is how you thought the site of your residence was not within the boundaries of plaintiff's placer claim? Isn't it true?

A No sir, I don't think it is.

Q You got confused with the width allowable for placer?

A I realized there was difference between placer and quartz.

Q That is, that there might be a difference—you realized there might be a difference in width, did you not?

A Yes sir, I understand the law to say there was a difference.

Q Did you understand, according to the law, you couldn't locate a claim wider than 600 ft. as a lode claim?

A Yes sir.

Q But you could locate a placer wider than that, couldn't you? You understood that?

A I never knew how the laws were on that point.

Q And you couldn't locate a placer claim narrower than that, could you?—just so long as the placer claim didn't exceed twenty acres? Is that what you understand?

A I always understood that a placer claim was supposed to be 660 ft. and 1320 ft.—that's the way I always locate.

Q Didn't Grant tell you in substance that it was allright if your house was above that line—that it was allright with him?

A No sir, he never told me anything—he referred

me to Mr. Aitken—said he was working for him and I would have to see him.

Q Did he tell you that Mr. Aitken had any interest in this claim?

A He told me he was working for Mr. Aitken and located it for him.

Q He told you he located it for Mr. Aitken?

A Yes sir.

Q When was it he told you that?

A When I asked him about building.

Q How many times was it he told you?

A I think once was all.

Q You knew at that time that he was superintendent of Mr. Aitken's?

A Yes sir.

Q And had been for some time prior?

A Yes sir.

Q And as a matter of fact, was superintendent for Mr. Aitken after that?

A Yes sir.

Q He also told you he located it for Mr. Aitken for a building site?

A No sir, he didn't tell me that.

Q He didn't tell you he had located it for Mr. Aitken for warehouse purposes?

A Not that I remember—that he had located it for that purpose at all.

Q Did he tell you that Aitken had grub-staked him in that country?

A No sir.

Q Only that he was working for Aitken and had located this claim for him?

A And I would have to see Mr. Aitken about a building site.

Q Who did you see about building the next building—the cache?

A Mr. Aitken. I had the cache already up when Mr. Aitken come there.

Q Was that before the house was built?

A Yes sir.

Q The cache is below the 660 ft. line?

A Yes sir.

Q Did you know it at that time?

A Yes sir.

Q You thought it was within the boundaries of the Hillside Bench?

A Yes sir.

Q Did Aitken give you permission?

A No sir, when I built the cache I thought I would take a chance.

Q You built the cache without permission of any one?

A Yes sir.

Q You thought you would take a chance?

A Yes sir.

Q Why didn't you take the same kind of a chance on your house?

A I could move the cache with small expense, and the house would be some expense.

Q Then it was a question of—you considered your own liability wouldn't be much if they made you move the cache—you could move it easily?

A Yes sir.

Q You didn't want to take such a serious chance

as to be compelled to move your house off?

A Yes sir.

Q Did you build the bunkhouse after that?

A Yes sir.

Q Whose permission did you get?

A I asked Mr. Aitken—not for the bunkhouse, but I asked him in respect to building the house and the dump and he told me to build or dump wherever I had a mind to.

Q Any place?

A Yes sir.

Q And you did so after that?

A Yes sir.

Q Without consulting Mr. Grant at all?

A Yes sir.

Q Mr. Aitken had an option at that time to purchase this ground?

A Yes sir.

Q And he was working and mining it?

A Yes sir.

Q And he gave up that option, didn't he?

A Yes sir.

Q And as a result of his workings, he left some water in your shafts?

A Water in my shafts?

Q The ground that Aitken worked, when he left it, he left your mine full of water?

A No sir—he left some of it full of water.

Q You and Aitken had considerable trouble about it?

A No sir, I never spoke to him about it.

Q Haven't you got an ill feeling towards Tom Aitken at this time?

A No sir.

Q You haven't?

A No sir.

Q You never had any trouble?

A No sir.

Q Did you ever have any trouble with Mr. Grant?

A Very little.

Q How little?

A I never had any trouble that I know of.

Q You don't feel friendly, do you?

A I use him as friendly as he uses me.

Q You don't feel friendly—have you anything against Mr. Grant?

A I have nothing against him.

Q Don't you feel unfriendly to him now? Do you or not feel unfriendly to William Grant?

A No sir, I do not.

Q You don't?

A I don't.

Q Do you feel friendly towards William Grant?

A I am friendly with him always.

Q You may pretend to be—but I am asking if you feel friendly?

A Yes sir—I would do Mr. Grant a turn.

Q What kind of a turn? You mean a turn against him, if you could?

A No sir.

Q What kind of a turn?

A If it was possible to do a good turn, I would do it any time.

Q He was neighborly there and didn't object to your putting your buildings along there?

A Yes sir.

Q Did he ever make any objection to your using any portion of that claim as a dumping ground?

A No, I didn't know Mr. Grant owned the ground.

Q You saw him stake it?

A He referred me—he did it for Mr. Aitken—it was Mr. Aitken's and he told me to see him.

Q Did you go to the Recording Office there and see in whose name it stood?

A I thought his word was good.

Q He said he didn't tell you. Who is telling the truth?

A If he said he didn't, there is certainly something wrong.

Q One of you are mistaken? Did you ever go to Mr. Grant and ask him for permission to dump on his placer claim?

A I don't remember asking him for permission.

Q Will you swear you never did?

A I may have—I don't remember asking Mr. Grant, but I may have asked Mr. Grant for the privilege of dumping at the same time he referred me to Mr. Aitken.

Q Where is Mr. Aitken?

A I don't know.

Q He is not in this immediate vicinity?

A As far as I know, he is not.

Q When did you see him last?

A When he was over in the Kantishna.

Q When?

A Just before I started building my house a short time.

Q In 1920. Have you seen him since?

A No sir.

Q Has he been in the vicinity of the ground that you know of?

A He left there in—I don't know, but think it was some time in the spring that year—in March or February.

Q And you haven't seen him since?

A No sir.

Q You have been around Fairbanks for a month or two, have you not?

A Yes sir.

Q You haven't seen Mr. Aitken around Fairbanks?

A No sir.

Q Don't you know as a matter of common repute that he is in the Kuskokwim?

A I understand he has been in the Kuskokwim but I don't know whether he is now or not.

Q When you gave your testimony about Tom Aitken giving you permission to build on there, you know it is absolutely impossible for me to put Tom Aitken on the stand because he is several miles away?

A It don't matter to me whether he is or not—that testimony is true, and it is the same.

Q You say it is the truth?

A Yes. Mr. Aitken being away from here or being here wouldn't change that statement.

(Recess of ten minutes until 3:45 P. M.)

J. B. QUIGLEY, called as witness for defendants, being heretofore sworn, testified:

Cross Examination, continued.

BY MR. STEVENS:

Q Mr. Quigley, along about the latter part of September 1921, state whether or not you contemplated starting a new tunnel to begin near the lower line of the Red Top Quartz Claim—near the lower end line.

A Yes sir, I did.

Q Did you, about the month of September, or the latter part of September 1921, on or near this place, state in substance to the plaintiff, William Grant, that you would like to start another tunnel, or a new tunnel, down near the lower end of your Red Top Claim, and asked him whether or not you could get permission from him to dump out of that tunnel on his placer claim?

A I did.

Q You did?

A Yes sir.

Q State whether or not he gave you that permission—state whether or not you obtained that permission to dump.

A I don't remember what his answer was on that.

Q You don't remember his answer? You didn't get permission from him to dump?

A I don't remember what his answer was—think he ignored it.

Q If he ignored it, he didn't give you permission.

A No sir.

Q You don't claim he gave you permission?

A No sir.

Q Yet you asked him for permission?

A Yes sir.

Q Did Campbell or Tobin ever give you any permission to dump on what they call their claim?

(Mr. Roth makes objection on the ground of being irrelevant, incompetent and immaterial. Objection over-ruled.)

A They did.

Q Then if Campbell and Tobin win this case, you will have permission to dump on a part of their Silver Lode Claim? That is true?

A As I understand it—yes.

Q And to that extent you have an interest in the result of this suit, haven't you?

A I never looked at it that way.

Q I didn't ask you that question. You, having obtained permission to dump on Campbell and Tobin's ground, in the event the jury should determine that their claim is valid, and inasmuch as you failed to get permission from the plaintiff Grant to dump on his placer claim, to that extent you have an interest in the result of this suit, haven't you?

(Mr. Roth enters objection which is sustained. Mr. Stevens takes exception which is allowed.)

Q You have taken a great deal of interest in this case?

A I have not—not that I know of.

Q You have been the last month or two while in

Fairbanks a constant associate of Mr. Roth, have you not?

A I have been with Mr. Roth quite regularly.

Q You have been up to his office many times?

A Yes sir.

Q And you have discussed this case with Mr. Roth many times, have you not?

A I have discussed it, but not many times.

Q You have gone to the Model Cafe with Mr. Roth time and time again and ate with him?

A Yes, I have.

Q You and Mr. Roth are on very friendly terms?

A Yes sir.

Q You were here when this case was called last Wednesday morning, were you not?

A Yes sir.

Q And you were in Court at the time plaintiff's counsel asked that witnesses be excluded, were you not?

A Yes sir.

Q And you are the same Mr. Quigley that Mr. Roth asked the Court to make an exception of and not exclude you because Mr. Roth wanted to consult with you about this case during the trial of the case?

(Mr. Roth enters objection to the question which is over-ruled.)

Q State whether you are the same Mr. Quigley.

A You will have to ask Mr. Roth, I don't know.

Q Do you know of any other man in the court room at that time except yourself by that name?

A I do not.

Q Now in all fairness, don't you know as a mat-

ter of fact, that Mr. Roth referred to you?

(Mr. Roth enters further objection which the Court over-rules and states that witness may answer if he knows.)

A I don't know—there may have been other men here.

Q By the name of Quigley?

A There may have been—I never heard of them, but there are many men in here I don't know the names of.

Q It is possible.

A It is possible, yes.

Q I am talking of their Alaska names—you don't know of a man here by the name of Quigley—no man in the country, except yourself?

A No, I don't know of any one.

Q Isn't it true that Mr. Roth had indicated to you that he wanted you in the court room to consult with in the case? Isn't it true?

A I never knew of him saying he wanted to consult with me in the court room—I never knew of it until then.

Q You were quite willing to do so?

A Well, I suppose if I had been called—I don't know what is expected.

Q You are perfectly willing to consult with Mr. Roth from time to time about this case during the trial of it, are you not?

A Yes, of course, I would consult with Mr. Roth during the trial.

Q You have been, during this trial—out of court?

A Yes sir.

Q Frequently?

A Frequently, yes.

Q Do you remember the time in Fairbanks, Alaska, here in Mr. Roth's office, he occupying the District Attorney's Office at that time, or downstairs in the hall, that Mr. Roth introduced you and I?

A Yes sir.

Q And at that time I told you and Mr. Roth that I had brought this suit? Do you remember that?

A Yes sir.

Q And that was the first knowledge you or Mr. Roth had that the suit had been brought?

A That is the way I remember.

Q And didn't I ask you, Mr. Quigley, if you wouldn't be kind enough to come to my office to talk about it?

A You told me to come to your office and talk with you.

Q You said you would?

A Yes sir.

Q And after the expiration of several days, I met you down in front of the Pioneer Hotel and again reminded you of your promise and I said any time before you left town I would like to talk with you? And you said in substance, "That is allright, I am not going to leave for ten days yet."

A I don't remember that.

Q As a matter of fact, you left the next day and never came to my office and never talked about this case at all?

A I will tell you one thing—I was at your office.

Q When?

A When? Last summer.

Q I am talking about when this suit was brought.

A You were talking about last summer.

Q It was after this suit was brought that Mr. Roth introduced you and I—at least I had informed you the suit was brought?

A Yes sir.

Q Since that time you haven't been in my office?

A I have.

Q Since that time?

A Yes sir.

Q Not when I was present?

A No sir.

Q You and I have never had any talk outside of the court room at this trial about this case, have we?

A No sir.

Q Are you able to tell which way the lode, so far as you have uncovered it, within the boundaries of your Red Top Lode Claim, pitches? Does the lode pitch towards the east or towards the west?

A Which way is the dip of the lode?

Q Yes.

A It dips to the southeast.

Q It dips in the direction of up-stream Moose Creek, does it?

A Yes sir.

Q When you go down hill a considerable distance from where you uncovered the vein, and there being a great deal of difference between the elevation of where you found it and not knowing the depth of the over-burden, if you wanted to sink to strike that lode, you would take into consideration the dip of

the vein, would you not? and the elevation?

A Yes sir.

Q Then instead of coming in a direct line down hill along that lode, siting it, you naturally would go a little to the southeast, in order to strike the vein, wouldn't you?

A Not when going down hill on the same slope.

Q Well, if that vein—if the apex of the surface of where the vein was exposed was on a dead level, assuming that the vein or lode had the same pitch or dip, then you would expect to find it right in line if on the apex, wouldn't you?

A If on the apex and it run on a level, I would expect to find it something on line.

Q Now, if the surface was worn so that the top of the vein, say now, was in that direction (indicating), you would expect to find—and you have uncovered it up hill and know it pitches that way—if that vein originally run straight on a level and pitched the same way it did, and by the time you get way down hill, your vein would be way over here to the right, the way it pitched?

A Yes sir.

Q If this was the surface, you would go considerably up hill or to the eastward in order to strike the vein?

A It would depend on the slope of the hill—if I had the strike of the vein here, I would follow along on the level—just to show my idea—if I was prospecting and this was the level or apex, after I had it lined up on the surface here and found the dip of the vein, I would come over here naturally to find it

—off to the right—but if running on the same slope right along, I would expect it to follow that slope, providing the vein had the same depth after it went down.

Q Then if you were going to take the slope into consideration, lining up with your openings, why would you go to the eastward of where the—of the true line or straight line?

A If the hill didn't have the same slope—if it pitched off quicker.

Q As a matter of fact, you sited down and told Tobin about where you thought he ought to sink, didn't you?

A He had started the hole and asked me and I said I guessed that was about the right place.

Q Did you site?

A Yes sir, I went up hill.

Q When you sited down hill straight, didn't you take in consideration the dip there going about 12 ft. or more, or thereabouts, to the eastward in order to estimate where they would strike the lode?

A No, I don't believe I did.

Q You didn't take into consideration the slope of the vein at all?

A There would not be enough difference to make any variable amount.

Q You didn't take into consideration the dip of the vein at all?

A Not on that slope, no.

Q Have you any idea—it is indicated on the map, and is in the testimony, that the distance between your lower end center stake of the Red Top and the

mouth of your tunnel is 173 ft. Now what is the difference in the elevation on the surface between those two points?

A I don't know the difference.

Q Approximately—what would you say?

A All I know is the hill seems to run approximately the same—not enough difference in the slope to make any difference.

Q Isn't the hill quite steep from the lower center end line up to the mouth of the tunnel?

A It is about the same grade—not quite so much as it is from there up hill.

Q From where?

A From the tunnel up hill.

Q I didn't ask that question—I asked you whether or not the hill goes up pretty steep from your lower center end stake up to the mouth of the tunnel—a distance of 173 ft. Don't the hill run up pretty steep?

A Well, it depends on what you call a steep hill—I wouldn't call it a steep hill—a gentle slope all the way.

Q How gentle is it?

A I can't tell you the amount of elevation it has to a hundred feet because I haven't taken it, and if I had to describe it, that is the only way I have to tell you.

Q You don't know whether to call it a steep hill, or not?

A It may be what some people call a steep hill, but I don't call it steep.

Q But from the mouth of your tunnel up hill to

your discovery shaft, marked on the map, the grade is about the same as it is between the lower end center stake and the mouth of the tunnel?

A No, I think the grade is a little steeper up hill.

Q From the mouth of the tunnel up?

A I think it is.

Q Not much?

A I don't know how much.

Q Well, the lower part—the lower half approximately, of the Hillside Bench Claim, as originally staked, is flat compared to the upper part of it, is it not?

A Yes, the lower half is flat compared with the upper half.

Q Up hill somewhere near Tobin and Campbell's shaft the ground begins to raise very materially?

A I think there is quite a slope quite a ways below where Tobin and Campbell sunk too.

Q It is quite a slope, isn't it? As the testimony shows, that is quite a steep hill along where you are contradicting.

A No, I am not contradicting—I have never taken it, but it is not what I would call a steep hill—if I had to describe a hill, it is not what I would call a steep hill.

Q How many locations—how many quartz location claims have you in the Kantishna?

(Mr. Roth enters objection to the question. Objection over-ruled.)

Q You may answer the question—how many quartz locations have you in the Kantishna Mining district?

A Do you want to know how many I own personally?

Q Yes.

A I would have to have a little time to study it up.

Q Take your time.

COURT: Give it approximately.

A I think personally I have about eight or nine locations.

Q Quartz locations?

A Yes sir.

Q Then besides that—how many quartz locations in which you have an interest, besides that?

A That is in the vicinity of Eureka, you mean?

Q No, within the boundaries of the entire Kantishna precinct.

A I have an interest in twenty-seven claims.

Q Twenty-seven quartz claims?

A Yes sir.

Q Besides the eight or nine?

A No sir, counting the eight or nine I own.

Q Counting the eight or nine, you have twenty-seven quartz claims you are interested in in that vicinity?

A Yes—no, not in that vicinity.

Q I mean in the Kantishna precinct?

A In the Kantishna precinct, yes.

Q Twenty-seven, you say?

A I think it is twenty-seven.

Q Have you any interest in any placer claims in that precinct?

A No sir.

Q Have you any interest in the ownership of the

Silver King Lode claim of the defendants?

A The Silver King Lode Claim? Where is it situated?

Q That is the claim the defendants claim to own in this case.

A I have not.

Q Have you advanced any money for the purpose of carrying on this law-suit?

A I have not.

Q Have you loaned Campbell any money? Does Mr. Campbell owe you any money at this time?

A He does not.

Q Does Mr. Tobin?

A He does not.

Q Does Mr. Roth?

A He does not.

Q Did you put up money to pay Mr. Roth's attorney fees in this case?

Q Did you advance any part of it?

A I did not.

Q You say—have you had any permission directly or indirectly—or an interest in this Silver King Lode Claim of defendants

A I have not.

Q In the event they win, or otherwise?

A I have not.

Q Have you any option to purchase at any time?

A I have not.

Q But it is true, that across the valley and on the hill opposite to this hill, you have a number of quartz locations, or are interested in them?

A I have two I am interested in.

Q How far away are they from the mouth of your tunnel on the Red Top?

A I don't know—I would guess they would be in the neighborhood of one mile.

Q One mile away?

A Yes sir.

Q If those quartz claims that you say you have, or are interested in which are one mile away on the opposite hill, prove to be a continuation, or part of this same lode, you hope, do you not, to acquire the claims intervening?

A I do not—I have all the claims I can handle.

Q You are known as the principal claim owner in that country?

A I don't know as I am.

Q The Kantishna millionaire?

A I never heard of it.

Q Do you know of any one in that country that owns an interest in any more quartz claims than you do?

(Mr. Roth enters objection which is sustained)

Q In answer to one of Mr. Roth's questions, you stated in substance that the vein or lode which you uncovered between the mouth of your tunnel and what is known and indicated on the map as "Quigley's discovery", was a well known vein, did you not?

A Between the tunnel—

Q Yes, between the mouth of the tunnel and your discovery.

A I would consider it.

Q And that it was a well known vein at the time Campbell and Tobin entered on the ground in con-

troversy in May, 1921? That is true?

A I think it was.

Q And you have also stated that the mouth of the tunnel and some other holes disclosing the vein were south of the upper side line of the Hillside Bench Claim?

MR. ROTH: He didn't so testify—he said he didn't know where it was.

Q I will ask you now whether or not you stated that a part of the well known vein that you spoke of above the mouth of your tunnel—did you testify that it was below or south of the upper side line of plaintiff's bench claim?

A I didn't testify as to that.

Q You testified it was south and below this line—this blue line as indicated on the map.

A As indicated on the map—that is, if they got the holes put on the map as they are on the ground.

Q I believe you have already testified when you were on the stand before, that the distance between your lower end line of the Red Top and the mouth of your tunnel was a distance of over 100 feet. You didn't know how much, but somewhere between 100 ft. and 200 ft.

A I didn't know what the distance was—it may be more or less.

Q It is indicated on the map as being 173 ft. You think that is approximately the right distance?

A I don't know—it may be—I never measured.

Q I know you never measured—but is it about right?

A Approximately it may be—it may be consid-

erably less and it may be over.

Q Well, it is over 100 feet?

A I should judge it would be somewhere.

Q According to that, it would be approximately 200 feet between Campbell and Tobin's discovery and the mouth of your tunnel. You think it is about that? That is according to both maps, as I understand.

(Mr. Roth enters objection on the ground that it is not a fact as shown by the other map. Court understands it was not a question by counsel but a statement. Mr. Roth states that maps show for themselves.)

Q Do you know of the uncovering or of the existence of any place between the mouth of your tunnel and the Campbell and Tobin shaft where the vein is exposed?

A I do not.

Q Then, before or at the time Campbell and Tobin entered upon the ground to prospect on this Silver King claim, there was no known vein that was known to exist between the mouth of the tunnel and the place where Campbell and Tobin sunk, was there?

A I never dug below the mouth of the tunnel myself.

Q I know you didn't and nobody else did that you know of, did they?

A Mr. Campbell and Mr. Tobin dug before that.

Q Did they dig places before they went on the ground?

A No.

Q I am talking about the time before Campbell and Tobin went there?

A Not to my knowledge.

Q You perfected the location of your Red Top claim before Campbell and Tobin went on the ground, didn't you?

A Yes sir, I did.

Q At the time you located the ground there, you claim you made a valid location, do you?

A I do.

Q You claim now that the Red Top claim, as located by you, is a valid claim?

A Yes sir.

Q Then no part of the ground that was within the boundaries of your Red Top Claim, if it is valid, could be within the boundaries of Grant's placer claim, could it?

(Mr. Roth enters objection on the ground of being irrelevant, immaterial and incompetent, and not true as a matter of law. No action taken by the Court on the objection.)

Q Grant never made any claim, after you located your quartz claim, that he owned any ground within your quartz claim?

A He never told me.

Q So far as you know?

A Not so far as I know.

Q You claim he don't own any of the ground within the boundaries of your quartz claim?

A I don't know.

Q You claim to own it, don't you?

A I own the—I claim the quartz.

Q You claim the Red Top Quartz Claim?

A Yes sir.

Q You claim the right to possession of all the ground within the boundaries of your stakes, don't you?

A I claim to own all the quartz within the boundaries of my stakes—that is the way my location calls for.

Q You would have to own some surface rights in order to work a quartz claim, wouldn't you?

A Yes sir.

Q Isn't it true, you claim all the ground—surface and all—within the boundaries of your Red Top Quartz Claim? Isn't it true?

A That is the way my location calls for, I guess.

Q You don't concede at this time that Mr. Grant has any rights within the boundaries of your quartz claim, do you?

A I don't understand that difference between the placer and quartz—I understood the placer had rights to the surface.

Q Within the boundaries of the quartz claim?

A That they had prior—had a right to the placer on the placer claim—and the quartz—I understood quartz and placer didn't conflict—the one don't claim the quartz and the other don't claim the placer—as I understand the law.

Q You don't understand the law very well. Did you—do you know what—about what time of day it was when you and Tobin, in the presence of Mr. Campbell, determined where to start that shaft, on or about the 22nd of May, 1921?

A I think it was some time in the forenoon.

Q Did you say—do you know about how deep they went that first day?

A I don't remember.

Q Do you know whether or not they did some blasting there in order to get through the frost?

A I heard shots.

Q Did you furnish them the powder?

A I don't think I did—I don't remember.

Q You heard some shots that day, did you?

A I am not positive whether it was that day or the next day—they shot at various times.

Q Did you hear them blasting at that point on any—on two or more different days?

A Yes, I heard them blasting probably several different days.

Q Several different days they blasted?

A Yes sir.

Q But you haven't any knowledge about how far they went down the first day?

A No, I have not.

Q Do you know how far they went down the second day?

A I do not. I wasn't keeping track of the distance they were going.

Q Well, you have stated in the light of your experience you have not been able so far to find any quartz vein or lode that runs exactly straight? That is your testimony?

A Yes sir.

Q They are bound to waver and vary from a straight line?

A They vary to a small extent—never any great

extent—according to my experience.

Q You know, as a matter of fact, it is a very frequent occurrence for a vein or lode to run—to turn and go most any direction, don't you?

A I have seen cuts in mining books where it sometimes turns off to a considerable angle.

Q You have seen cuts in mining books where it would turn right around at right angles, or more?

A I don't know as I ever saw such a cut.

Q Aren't you familiar with the case at Leadville, Colorado, where the vein makes a regular horseshoe turn in one of the very richest lodes that they have ever discovered in the world? You are not familiar with that?

A No sir.

Q You know, as a matter of general information, that they do turn frequently?

A I don't know except from cuts—except reading mining books—they are liable to turn.

Q That is the only way to find out?

A My experience hasn't been extensive enough to speak as an authority on my own account.

Q You know as a matter of fact, when you strike a lode, you can't tell how far it goes down until you get down? Isn't that true?

A I don't know from experience.

Q You don't know? Now what is your answer? Don't you know how to answer that? Do you mean to say as far as you are able to say, you know of no way of determining how far a lode runs down into the ground without sinking down on it? Is that your answer?

A I know from authorities I get from mining books that a fissure vein is supposed to be of continuous depth.

Q How far is a fissure vein supposed to go down—how far?

(Mr. Roth objects to the question as immaterial, irrelevant and incompetent. Court rules that witness may answer, if he knows. Objection over-ruled.)

Q You just said from your reading, as I understand, that whenever you find a fissure vein—a true fissure vein—it is supposed to go down—(interrupted)

A They are supposed to go down more consistent than other veins.

Q But you couldn't tell how far it is supposed to go?

A No, I couldn't tell.

Q Isn't that same thing true, with regard to the value of the vein?

A Yes sir.

Q There is no way of telling whether the vein gets more valuable or less valuable as you go down on the vein?

A No sir—it would save me lots of work if I could tell.

Q It might get richer, might it not?

A Yes sir.

Q And it might get poorer, or it might remain the same?

A That is the way I understand it.

Q In going across country along the surface there is no possible way to tell how far a lode ex-

tends until you demonstrate it?

A Not that I know of.

Q A lode across the country or across a claim, going in a certain direction, may stop at any time? Isn't that true?

A A lode may fault—something of that kind.

Q Pinch out—cease to exist?

A Possibly—they all cease to exist some time.

Q It might be a foot away, or miles away? Isn't that true?

A It is true as far as I know.

Q Isn't also true, that unless you open a lode or vein up, there is no way of telling whether it is the same vein or not? Isn't it?

A There is no way of telling positively, I guess.

Q When you speak of the strike of a lode, you mean the direction of the lode, don't you?

A Yes sir.

Q Some time in—Mr. Roth asked you whether or not a certain conversation took place between you and William Grant in the presence of 'Big Sandy' or Sandy Burr, some time in August or September 1920, while you were working on the Red Top Lode Claim, and you replied that that conversation that he read took place. Now, go ahead and give that conversation and tell us just what was said.

A I will have to tell you in substance.

Q I don't expect it exactly.

A Mr. Grant come along and asked what I was doing. I told him I dug up a pretty nice looking prospect.

Q Was that near your discovery shaft?

A It was somewhere near—between the tunnel and discovery shaft—and I told him I had dug up a pretty nice looking prospect—I sprung it on him more as a josh. I says—I told him I was kind of wanting to see him to get a building site as I had got tired of living on the hill. He told me, alright, I could have a building site providing I turned the work done there in as assessment on his placer claim. I told him I didn't think where I was working there was on the placer, and he says, "oh yes, it is—see that stake up there?"

Q What stake was that?

A The stake that stands above my house.

Q What is indicated as the stake number?

A I don't know the number.

Q The northwesterly corner?

A Yes, that would be the one, I guess.

Q You don't know when that was?

A I don't remember the date.

Q Do you remember the month?

A I don't remember the month—wouldn't be positive of the month either—it was shortly after I started work on the claim.

Q Was that all that was said?

A That was about all that was said at that time.

Q Did anybody else say anything in regard to the matter?

A No.

Q That conversation was just between you and William Grant?

A Yes sir.

Q And Big Sandy?

A He was present.

Q Where is Big Sandy?

A Somewhere in the country.

Q You don't know where though?

A He left there that fall—was working at Nenana a year ago, but I don't know where he is now.

Q Did you see him a year ago?

A Yes.

Q In Nenana?

A Yes.

Q Have you seen him since?

A No.

Q That is all you remember about it, is it?

A Yes sir.

Q When was it, if at all, that you wanted Grant to give you a bill of sale to that property?

A That was sometime afterwards.

Q About when?

A It was—I don't know the date—the same as the other—it was some time before Mr. O. M. Grant started doing assessment work on the placer.

Q It must have been some time prior to November 1920?

A It was prior to that time, yes.

Q You made a proposition to O. M. Grant that he should give you a bill of sale?

A Yes sir.

MR. ROTH: You mean Billy Grant?

Q I mean Billy.

A Yes sir.

Q That was some time prior to the time O. M. Grant did the assessment work?

A Yes sir.

Q How long prior?

A I don't know.

Q About how long

A I don't know—it was some time between the time I had started—sometime between the time I saw him—

Q You mean it was some time after September 1920?

A It was some time after I spoke to him on the first occasion about a building site.

Q Was it after you built your house?

A No sir.

Q Was it before you built your house?

A It was.

Q How long before?

A Quite a long time before I built the house. I think I built the house in January—I think it was January.

Q January 1921?

A Yes.

Q Now it was before that that you asked Billy Grant to give you a bill of sale

A Yes sir.

Q Where was that conversation?

A That was on the Red Top.

Q The same place that this other conversation?

A No, it was up hill—was working on another hole further up hill.

Q And you told Billy Grant that if he would give you a bill of sale so as to get the property in your

care, you would keep up the assessment work on the claim?

A I told him I understood he just wanted it for a building site, and told him, "If you will give me a bill of sale of the claim, I will keep the representing done, and you can build there."

Q In other words, you were perfectly willing to keep up that ground as a placer mine and let Billy Grant put up buildings as he wanted to?

A I would have gone to work sinking on the placer below.

Q What for? For the purpose of discovering a lode or for the purpose of discovering placer?

A For the purpose of discovering either one.

Q So you wanted that claim bad enough, if Billy Grant would give it to you—you would hang on to the claim and if he wanted to put up buildings, he could do it?

A Yes sir.

Q Isn't it true, that it is customary to allow one man or a dozen men to build on a placer claim as long as they don't interfere with the placer mining, and that it is customary not to charge them anything—the same as you claim Aitken did for you on that house that he gave you permission—Aitken gave you permission to put your house there, didn't he?

A Yes sir.

(Mr. Roth enters objection to the question as being irrelevant, incompetent, as well as unintelligible. Objection sustained.)

Q You are a mining man of considerable experience. Did you ever know of any man—one man to

give another man a deed to a mining claim simply for the privilege of putting a building on it?

(Mr. Roth makes objection to the question as not being proper cross-examination. Objection sustained. Mr. Stevens takes exception, which is allowed.)

Q What else was said in that conversation?

A I think, if I remember where I left off—I think that was all that was said.

Q What? That you asked Billy to give you a bill of sale and if he would do so, you would let him build there?

A No, that is not all. When I asked him, he said, no, he couldn't do it—that the ground was Tom Aitken's, that he was working for Tom Aitken and located it for him, and I would have to see Tom.

Q That was long before you built your house?

A Quite a while.

Q If that is true, why did you after that, at the time you started your house, ask Billy Grant for permission to build—and that you say he then told you that it was Aitken's claim and to go and see Aitken? Isn't that true?

(Mr. Roth enters objection as not being proper cross-examination. Court states that the method of examination is scarcely proper and sustains objection. Mr. Stevens takes exception which is allowed.)

Q Mr. Quigley, did you ask Mr. Grant for permission to put your house where it is now located?

A I did not, that I remember.

Q Did you ask Mr. Aitken to put your house where it is now located?

A No sir.

Q Did you ask Mr. Aitken for permission to put any of your buildings where they are located?

A Not where they are located—I just asked him for permission to build and dump.

Q You asked Aitken?

A Yes sir.

Q And when was that?

A That was shortly after Mr. Aitken come over from the Kuskokwim.

Q When was that?

A I don't know the date he arrived.

Q About what time was it?

A I don't know about what date he arrived—some time in the first part of the winter.

Q When was it with reference to the time you say you asked Billy Grant to give you a bill of sale?

A Quite a little while after I asked Billy Grant to give me a bill of sale.

Q After you asked Grant for a bill of sale, it was quite a while after that Aitken came in and you asked Aitken for permission to build. Did you ever ask Aitken for a bill of sale to that ground?

A No sir.

Q Did Aitken give you any permission in writing?

A No sir.

Q He never gave you a bill of sale to the ground?

A No sir.

Q Nor a deed?

A No sir.

Q When you and Hamilton went over to the southeasterly corner of the Grant placer claim,

known as the Hillside Bench, you say you don't know whether Grant went there or not?

A I don't remember.

Q What did you and Hamilton do, if anything?

A The object in going over was that Mr. Hamilton was looking to see if it was his corner line—or his side line rather.

Q That was after Hamilton and Grant had been up to the southwesterly corner of Grant's claim—what is now Grant's claim?

A I guess it is the southwesterly corner—the corner below my cabin.

Q That is, Grant and Hamilton went down to this southwesterly corner of Grant's claim?

A Yes sir.

Q And where were you? You didn't go down there?

A No.

Q Where were you?

A Probably—I couldn't tell just the distance.

Q All I want is an approximate estimate—about. Where were you?

A Over three hundred to four hundred feet—it is hard to tell.

Q And the reason you didn't go over there was you loaned your snowshoes to Grant?

A Yes sir.

Q Grant wore your snowshoes and went over to the initial stake and you saw Grant writing something in the presence of Hamilton?

A I don't know who did the writing—or whether

Hamilton did the writing—and don't know whether any writing was done.

Q Were you watching them all the time?

A No, I wasn't watching.

Q What were you doing?

A Waiting for Mr. Grant and Mr. Hamilton to come over there.

Q When Grant and Hamilton came over to the road they joined you there?

A Yes sir.

Q Did Grant give back the snowshoes?

A Yes sir.

Q Did you put them on when Grant gave you the snowshoes—did you put them on to your feet?

A I don't know whether I put them on right then or not.

Q Didn't you almost immediately go with Hamilton down to what is designated here as corner No. 2?

A Yes sir, we went very shortly afterwards.

Q And you in going used your snowshoes?

A Yes sir.

Q What did you and Hamilton go down there for?

A To see if that was Hamilton's corner stake.

Q What interest did you have in knowing whether it was Hamilton's corner stake?

A Mr. Grant had asked me if I would go along.

Q Didn't Mr. Grant ask you to go along with him to be a witness for his staking of the placer claim?

A No sir, he did not.

Q What did Grant say was his object in asking you to go down?

A I don't know what his object was—he asked if I knew where Mr. Hamilton's stake was and I told him, no, he would have to see Mr. Hamilton, and we went over together to see Mr. Hamilton.

Q And you came back together?

A We came back together.

Q Don't you know, as a matter of fact, that that day Mr. Grant, in the presence of Mr. Hamilton, used Hamilton's stakes—adopted Hamilton's stakes and made one of them Grant's initial stake and one Grant's post No. 2?

A I don't know—I suppose that was what it was—I wasn't at the stake.

Q And that was Grant's object—that was why he wanted you along?

A Yes.

Q Well, when Grant went to this corner post No. 4, which would be the northwesterly corner of the placer claim, you were up there with Grant?

A Yes sir.

Q And helped him fasten that stake by piling rocks?

A Yes sir.

Q You know Grant put some writing there?

A I remember him doing some writing.

Q You remember that was intended to be part of the boundary of the Grant Hillside Bench Claim?

A Yes sir, that is what he told me—I didn't know the name of the claim.

Q Placer claim?

A Yes.

Q Mr. Grant testified when you put up that

northwesterly post, corner No. 4, that it was the next day—you say the same day. You are positive it was on the 19th day of April 1920?

A I am not positive of the date.

Q You are positive it was the same day he wrote on the other two stakes?

A I am positive.

Q You are positive Grant did write on this lower stake?

A No—it was the same day.

Q That Hamilton and Grant went down?

A That Hamilton and Grant came to this stake.

Q And one wrote something?

A I don't know—I suppose they did—I understand that is what they went over for.

Q You have no knowledge of when corner No. 3, which would be the northeasterly corner of Grant's placer claim, was established?

A I have no knowledge?

Q Mr. Quigley, the day that Hamilton and Grant were together—the time that they went down—the time we have just been talking about—in the establishment of those two stakes—did you hear Mr. Hamilton tell Mr. Grant in substance that Mr. Grant could use his stakes, or the side of his stakes?

A I heard him say something of the kind, but how it was, I don't remember.

Q He said something to that effect?

A That is as I understood it at that time.

Q Do you remember, as a matter of fact, that Mr. Grant had some stakes prepared and there on the road at that time?

A I don't remember that, but there was some stakes, or some timber—don't know whether stakes or not—on the road that had been lost off a load, or something, and Mr. Grant cut the one stake that he took and put above the house.

Q Were there other timbers there that he didn't use that he might have used?

A I think there was timber there—there wasn't any pile of timber, but there was probably two or three sticks that were over-loaded and lost off—as I remember.

Q Fell off some wagon?

A On the sled trail.

Q So far as you know, Mr. Grant brought those there and didn't use them because Hamilton gave him permission to use his stakes, or the side of them?

A He may have.

MR. STEVENS: That is all.

Re-Direct Examination

BY MR. ROTH:

Q Did Aitken have option to purchase the Red Top Claim?

A He did not.

Q That was not included in the option?

A No sir.

Q You stated in response to the various spirited questions of Mr. Stevens that you came up to my office regularly?

A Yes.

Q Did you come up on business with reference to this trial?

A I did not.

Q The fact is you came up with reference to lodge business?

A I did.

Q Getting instructions from me?

A Yes sir.

Q That is why you were there?

A That is why I was there.

Q How much is the dip of that lead?

A I have never taken the dip.

Q Well, is it much? Is it great or small?

A The dip on the walls of that lead is very irregular—it all has a tendency to dip to the south similar to—that would be an average dip—making a guess, it would be—I don't know what angle—I never tried it.

Q A very small dip?

A Well, it was—(interrupted)

Q That is alright. The quartz claims that you have in the Kantishna country, I will ask you to state whether or not, in acquiring those claims, that you in each instance did the work that was necessary to get each one of those claims that you have.

A Yes sir.

Q You didn't buy any of them?

A I did not.

Q You have ben prospecting in there since 1911 for quartz, as I understand—(interrupted)

A The question you have just asked—I was interested at one time with Mr. McGonigle—him and I

worked together at one time. Some claims that I have now, they was probably located in his name, but in dividing—(interrupted)

Q —you got? Perhaps they had been staked in his name and you got some staked in his name?

A Yes sir.

MR. ROTH: That is all.

Re-Cross Examination

BY MR. STEVENS:

Q Did you ever stake any mining property for Mr. Roth?

(Mr. Roth enters objection on the ground of being irrelevant, incompetent and immaterial, and not cross-examination. Objection sustained. Mr. Stevens takes exception which is allowed.)

Q Do you own an interest in any property in which Mr. Roth claims an interest in?

A I do not.

Q Do you own any property in your name in which Mr. Roth has an interest?

A I do not.

Q Do you manage any of the business affairs of Mr. Roth in relation to—(interrupted)

(Mr. Roth enters objection to the question as being immaterial. Objection sustained. Mr. Stevens takes exception which is allowed.)

Q Now Mr. Quigley, isn't it true that you advised either Mr. Campbell or Mr. Tobin, or both of them, to go on this ground and sink and locate this claim?

A I did not.

Q Did you advise any one at any time to go on

there and jump that claim?

(Mr. Roth makes objection on the ground of being irrelevant, incompetent and immaterial, there being no evidence of any jumping. Objection sustained. Mr. Stevens takes exception which is allowed.)

Q Do you know Mr. TenEych—Mr. William F. TenEych?

A I do.

Q I will ask you whether or not about two weeks prior to the time that Campbell and Tobin went on this ground and started to sink their hole, if you stated to Mr. TenEych and his partner, Mr. Connelly, in substance, as follows: "Why don't you fellows stake that ground (referring to the same ground that Campbell and Tobin claim to have located), and stated to them that they might just as well stake it as any one else. Didn't you state that?

A I don't remember of any conversation of the kind, Mr. Stevens.

Q You don't remember of making such a statement?

A No sir.

Q Do you deny making such a statement?

A To the best of my knowledge, I never made such a statement,

MR. STEVENS: That is all.

Further Direct Examination

BY MR. ROTH:

Q Did you care who did or who did not locate that claim?

A I did not.

Q Are you concerned—are you perfectly willing that Billy Grant should stake that quartz claim?

A I am perfectly willing.

Q Were you interested in having it worked?

A I was.

Q Why?

O It would have helped develop the property I was working on.

MR. ROTH: That is all.

Further Cross Examination

BY MR. STEVENS:

Q You were interested in having somebody go there and sink a shaft and discover a lode in the hopes of determining whether or not the vein runs down that way for your own benefit?

A It would naturally interest me to know what was there.

Q And you having obtained a dumping ground from Tobin and Campbell, and didn't obtain dumping ground from Billy Grant, then for that reason you would rather have Campbell and Tobin on that property than Billy Grant who didn't give you dumping ground? Isn't that true?

A It is not true.

Q That dumping ground is worth something?

A Yes, it is worth something.

Q Whenever you want to start a new tunnel at or near the down hill or southerly end line of your

claim, why you couldn't run your dump at all unless you would get dumping ground below, could you?

A It would be liable to be some years before I ever attempt to run a tunnel down there.

Q When was it you obtained this permission from Campbell and Tobin to dump on their ground?

A It was—I can't tell the date.

Q As near as you can say.

A It was very recently. Could you tell the date, Mr. Roth? (addressing Mr. Roth)

Q Never mind about Mr. Roth, I am asking you about what time.

A Very recently—within the last ten days.

Q You made arrangements with Mr. Roth, did you?

A No sir.

Q Did Mr. Roth have anything to do with the arrangements?

A I don't know who drew the papers up. Mr. Tobin came and told me—I had asked Mr. Tobin as well as Mr. Grant, and Mr. Tobin last summer put me off on the proposition—wouldn't say—told me as far as he was concerned it was allright, but he would have to see Campbell, so Mr. Tobin he saw Campbell and it was perfectly allright for me to dump.

Q And did Mr. Roth speak to you about it?

A No sir, Mr. Tobin came in and volunteered it to me.

Q You asked Mr. Tobin last fall—last year?

A Yes sir.

Q Before their location was made or after?

A I certainly wouldn't ask them before they had their location.

Q I don't know whether you would or not.

A It was after.

Q When you went there and lined up this prospect and indicated to Tobin where to sink, did you say anything to Tobin at that time about getting permission to dump?

A I did not.

Q Did you have it in your mind?

A I did not.

Q That was after you had seen Billy Grant and he had refused to give you permission to dump?

A Billy Grant, as I understand, didn't refuse—similar to Mr. Tobin, he didn't say.

Q After you had talked with Tobin last summer about getting permission to dump on the Campbell and Tobin ground, they finally come to you and said you could have permission?

A Mr. Tobin told me I could have permission, but couldn't do it without Campbell's permission.

Q He afterwards came and told you it was all-right with Campbell?

A Yes sir.

Q What was done? Somebody made out papers, did they?

A Yes sir.

Q Did Campbell and Tobin sign them?

A Yes sir.

Q Did you sign them?

A No sir—I don't know whether I did or not.

Q About when was it they were signed—the papers signed?

A About ten days, I guess.

Q That would be two or three days before this case started to be tried?

A I don't know how long before.

Q Well, we started last Wednesday, a week ago, to try this case—that was two or three or four days before that?

A I don't know the date.

Q You have got a copy of those papers, haven't you?

A Yes sir.

Q I wish you would produce them.

A I haven't them here—think they are in the Pioneer Hotel.

Q In Fairbanks. They are under your control, are they not?

A Yes sir.

Q I would ask that you get those papers. How long would it take to get them?

(Mr. Roth enters objection. Objection overruled.)

Q How long would it take you to get those papers? We ask you to get them at this time, or be able to produce them on incoming of court tomorrow—I want to see those papers. Did you pay any money as consideration for that privilege?

A I did.

Q How much?

A \$10.00.

Q Who did you pay it to?

A Mr. Tobin.

Q Did you pay for making out the papers?

A No sir, I did not.

Q Wasn't the \$10.00 you gave, for the purpose of making out the papers?

A I don't know—I didn't understand it that way.

Q You gave the money to Tobin—just \$10.00?

A Yes sir.

Q You didn't agree to pay him more?

A No sir.

Q You knew at that time that you were going to be a witness?

A I did.

Q You had been subpoenaed by them?

A No, I don't know whether I had been subpoenaed—they had warned me they would need me.

MR. STEVENS: If the court please, we ask that witness be required to produce the paper he spoke of as having been executed by Campbell and Tobin, giving permission to dump on the Silver King Lode Claim.

COURT: He has not indicated that he would have to be required. Are you willing, Mr. Quigley, to go and get those papers?

MR. QUIGLEY: I don't see why those papers should be shown up in this—they have nothing to do with this.

COURT: Are you willing to get them without the Court ordering you to do so?

MR. STEVENS: If the Court please, we ask that the Court require the witness to produce them.

(Mr. Roth enters objection to the introduction

of the papers as being immaterial.)

COURT: Mr. Quigley, will you bring it up in the morning?

MR. QUIGLEY: Yes sir.

Session 10:00 A. M. February 8, 1922.

J. B. QUIGLEY, called as witness for defendants, being heretofore sworn, testified:

Further Cross Examination

BY MR. STEVENS:

Q Mr. Quigley, did you bring with you the written agreement, or whatever it was—the instrument concerning the rights you have acquired from the defendants, Tobin and Campbell, to use a part of their Silver King Lode Claim to—as a dumping ground?

A I did.

Q Is this the paper? (Receives papers from the Court)

A Yes sir.

Q Is the instrument that I hand you the one that you described yesterday as having been received from the defendants in this case? (Hands paper to witness)

A Yes sir.

Q That is in the same condition as it was yesterday when you were on the stand?

A The same instrument.

Q Did you talk to Mr. Roth about it since you left the stand?

A I did.

Q Did you talk to Tobin or Campbell?

A No sir.

Q You talked with Mr. Roth?

A I did.

Q There is no change in the instrument?

A No change.

Q Did you find it in the Pioneer Hotel among your papers?

A Yes sir.

MR. STEVENS: If your Honor please (addressing the Court) the plaintiff would offer this instrument in evidence asking that it be marked Plaintiff's Exhibit "G", and of course, are quite willing at any time that the witness withdraw it by filing a certified copy.

(Mr. Roth enters objection to the introduction of the instrument, as being irrelevant, incompetent, and immaterial. Objection over-ruled, and instrument admitted and marked Plaintiff's Exhibit "G".)

Mr. Stevens reads Plaintiff's Exhibit "G" to the jury as follows:

"This agreement made and entered into this
"31st day of January, 1922, by and between J.
"L. Tobin and William J. Campbell, parties of
"the first part, and Joseph B. Quigley, party of
"the second part, witnesseth: That, for and in
"consideration of the sum of ten dollars \$10.00(
"lawful money of the United States, the receipt
"whereof is hereby acknowledged, the parties
"of the first part grant and convey unto the
"party of the second part a right of way, li-
"cense, and privilege to enter upon and into
"the northeasterly three hundred (300) feet

"of the Silver King Lode Claim, situated in
"Kantishna Recording Precinct, Fourth Jud-
"icial Division, Territory of Alaska, for the
"purpose of tunneling to remove ore from the
"Red Top Lode claim belonging to the party of
"the second part and for dumping, warehouse
"and storage purposes. In witness whereof the
"said first parties have hereunto set their hands
'and seals the day nd year first above written.

J. L. Tobin (Seal)

Wm. J. Campbell (Seal)

"In the presence of

"R. F. Roth.

"E. Coke Hill.

"United States of America

"Territory of Alaska ss.

"This is to certify that on this 31st day of
"January 1922, at Fairbanks, Alaska, J. L. To-
"bin and William J. Campbell, to me known to
"be the individuals named in and who executed
"the foregoing agreement as first parties, per-
"sonally appeared before me and each in per-
"son acknowledged to me that he executed the
"same. Witness my official seal and signature
"January 31st at Fairbanks, Alaska.

"E. Coke Hill. Notary public for Alaska.

"(SEAL) My commission expires Feb. 21st,
"1922."

BY MR. STEVENS:

Q That instrument was executed on the 31st day of January, 1922, it recites. That is the day it was executed, wasn't it?

A I know that is the date now—I didn't notice before.

Q That was the 31st day of January 1922—it was just the day before this suit started. Isn't that true?

MR. ROTH: That appears—it is no use to question.

Q When you stated it was two or three days before the trial of this case commenced, you were mistaken?

A I must have been—the date shows on the instrument.

MR. STEVENS: You may take the witness.

Further Direct examination.

BY MR. ROTH:

Q You told Mr. Stevens in cross examination that you asked Mr. Grant for surface rights, also that he didn't give you the rights?

A Yes sir.

Q What did Grant say to you at the time?

A He gave me an evasive answer in this way—he told me that he only owned a half interest and that he would have to see Mr. Stevens.

Q Did you ever talk to Mr. Grant about that since?

A No sir.

Q I will ask you to state whether you are still interested in getting rights from Mr. Grant?

A Yes, I am.

Q You told Mr. Stevens that you were interested altogether in about twenty seven quartz claims in the Kantishna district?

A Yes sir.

Q Mr. Quigley, I will ask you to state whether or not—how much work have you done in the Kantishna district on quartz claims?

(Mr. Stevens objects to question as immaterial. Objection over-ruled.)

A I have been working since 1911—I have been working continuously.

Q But how much have you done—what work did you do?

A Well, I got about—something over eight or nine hundred feet of tunnel driven in the country besides lots of surface excavations.

Q Who is it—who are the people that developed that country over there and determined that it was a quartz country?

(Mr. Stevens objects to the question as not being proper re-direct examination. Objection sustained.)

Mr. Roth states that he forgot to ask Mr. Quigley one question when on the stand before.)

Q Down there where these defendants sunk that discovery shaft on the Silver King Lode Claim—I will ask you to state whether or not there had been a fresh hole or shaft sunk in the immediate vicinity of that discovery shaft either—I mean in that same year, 1921,—either before that shaft was started by Campbell and Tobin or before they had completed

that shaft to bed-rock.

A Not to my knowledge, there was no fresh hole sunk.

Q Would you have known, if there had been?

(Mr. Stevens enters objection which is sustained.)

Q Were you there all the time?

A I don't know—I was there practically all the time—don't remember being away more than a day or two any time.

MR. ROTH: That is all—Oh, I want to ask you about this Plaintiff's Exhibit "G" just introduced in evidence, which is the document giving you surface rights by Campbell and Tobin. Who suggested giving you a writing?

(Mr. Stevens makes objection as being immaterial. Objection over-ruled and Court instructs witness that he may answer. Exception taken and allowed.)

Q Who suggested that that be put in writing?

(Mr. Stevens again makes objection on the same ground. Objection over-ruled. Exception taken and allowed.)

A Mr. Tobin.

MR. ROTH: That is all.

Further Cross-Examination

BY MR. STEVENS:

Q In answer to Mr. Roth's question on re-direct, you said something about a conversation between you and plaintiff Grant, wherein you wanted to se-

cure dumping ground rights from the plaintiff Grant?

A Yes sir.

Q And that he told you he would have to see Mr. Stevens? Is that right?

A Yes sir.

Q When was that—about?

A That was some time during the summer.

Q What summer?

A Last summer.

Q And about what time?

A I think along in August—maybe before August, or it may have been September—but during the summer sometime.

Q Why did you go and ask Grant for permission to dump on that ground if Grant had already told you that the ground belonged to Aitken and that Aitken had already given you permission to build there, as you heretofore testified?

A I understood that Mr. Grant—that Aitken had transferred it or that Mr. Grant claimed an interest different from what he told me before, and to secure myself both ways—I knew there was a controversy and I wanted the rights from either one.

Q You knew there was a controversy between whom?

A Between Mr. Campbell, Mr. Tobin and Mr. Grant.

Q You didn't know of any controversy between Mr. Grant and Mr. Aitken?

A I didn't know how it stood.

Q You didn't know of the existence of any controversy between them?

A No sir. I understood Mr. Grant had got it from Mr. Aitken, but I never knew. I understood he claimed it now and so I wanted to get his permission.

Q What did you understand—how did you understand Mr. Grant had acquired title from Mr. Aitken?

A I don't know how—any more than by report.

Q Did you go to the Recording Office to see?

A I never did.

Q You never found any transfer from Grant to Aitken, did you?

A No sir, I never looked.

Q You knew Grant had staked in his own name?

A I understood so.

Q You didn't know of the existence of any transfer from Grant to Aitken?

A I did not.

Q And no transfer from Aitken to Grant?

A I did not.

Q And the Recording Office is less than half a mile distant from your house? Isn't it?

A It is one-half to three-quarters of a mile. It seemed to me quite evident that Mr. Aitken had turned it over to Mr. Grant.

Q What evidence did you have?

A Mr. Grant seemed—as I understood, he claimed the ground then and Mr. Aitken had released his rights.

Q How did it seem to you that way—or did you dream it?

A I just had it from Mr. Grant.

Q What did you have from Mr. Grant?

A He told me it was his ground.

Q When?

A Later on.

Q When?

A After Mr. Aitken left camp, Mr. Grant stopped there and seemed to claim the ground.

Q Where? Where did such a conversation take place?

A Right on the hill—he told me several times he claimed the ground.

Q That was after he told you it was Aitken's?

A Yes.

Q Did you know from this about how he got it back from Aitken?

A I supposed it was transferred back.

Q Did you ever tell Mr. Roth about that?

A No sir, I didn't.

Q And yesterday when asked so many questions, why didn't you tell that?

A I don't remember any question that lead up to that.

Q Isn't it true that Mr. Grant never mentioned my name in connection with this ground when you and he talked there?

A No sir—he mentioned your name.

Q He mentioned my name?

A Yes sir.

Q That was in August?

A July or August some time.

Q About what day?

A I don't know the date—during the summer.

Q Was that before or after I told you in Mr. Roth's office that Mr. Grant had brought this suit?

A I don't believe I ever met you in Mr. Roth's office.

Q In the courthouse downstairs?

A I don't believe I met you in the courthouse downstairs.

Q You said yesterday you remembered.

A No sir.

Q My question comprehended—(interrupted)

A As I understand, if I remember when Mr. Roth introduced us—(interrupted)

Q Where was it he introduced us?

A I think it was right out on the corner.

Q What corner?

A Right out of the courthouse door—think it was on the opposite corner in the square somewhere.

Q Now, Mr. Quigley, it is a small matter, but as a matter of fact, don't you remember that downstairs at the foot of the front stairway in the courthouse, I met you and Mr. Roth on the inside of the hall, and that Mr. Roth introduced you and I?

A I don't remember it that way.

Q Did Campbell say I had one-half interest in that claim?

A I don't remember talking to Mr. Campbell.

Q I don't mean Mr. Campbell—I mean Mr. Grant.

A He didn't say you owned an interest—owned one-half interest.

Q One of Mr. Roth's questions was—he asked you about a half interest just a few minutes ago—I mean the one-half interest Mr. Roth says I own.

A I didn't understand it that way.

Q He didn't say what interest I had?

A He did not. I didn't understand whether he meant you had one-half or some one owned one-half.

Q That must have been after this suit was brought?

A It was sometime during the summer.

Q Are you sure he mentioned my name?

A I am sure.

Q This suit was brought sometime in the first part of August.

COURT: The 9th of August.

Q The 9th of August—and it was probably the next day when Mr. Roth introduced you and I—weren't you down about that time?

A I was down sometime in August.

Q And you stayed in Fairbanks something like a week or ten days that time?

A I was here—I don't remember—I think about a week.

Q You couldn't have got back to Kantishna much before the latter part of August.

A Sometime in the latter part.

Q Then it was after that you had this talk with Mr. Grant?

A I don't know positively.

Q Was it before you came in town?

A I am not positive about the date.

Q Mr. Grant didn't say anything about owning an interest—he didn't mention my name?

A Yes sir.

Q He didn't say I had any interest in it?

A I don't remember it that way.

Q Or he didn't say he had promised me any interest?

A No, I wouldn't say.

Q He didn't say anything about my interest—simply said he would have to see me?

A He said he would have to see you.

Q Did he say anything about Aitken owning an interest?

A No sir.

Q You are a mining man—you wouldn't expect any honest man to think a lawyer ought to try a case of this importance for nothing, do you? You wouldn't expect a lawyer to work for nothing?

A I never considered that.

Q Do you, as a mining man, think it perfectly legitimate for a mine owner to give a lawyer an interest in a claim, if he hasn't money to pay for it?

(Mr. Roth objects to question as being immaterial. Objection sustained.)

MR. STEVENS: That is all.

MR. ROTH: That is all.

JOHN BUSIA, called as witness for defendants, being heretofore sworn, testified:

Direct Examination

BY MR. ROTH:

Q Where were you working during the month of June—no, during the month of May last year, which would be 1921?

A For Joe Quigley.

Q What doing?

A Driving a tunnel for him.

Q Do you know William Campbell?

A Yes.

Q Do you know Mr. Tobin?

A Yes.

Q Did you see them do any work close to Quigley's tunnel where you were working?

A Yes.

Q What did you see them doing?

A Sinking a shaft.

Q Did you—were you there when they commenced to sink?

A I was 300 to 400 ft. away on the ground when they started to work.

Q You were there the same day?

A Yes.

Q Did you hear them work there or what did you hear around there?

A I never heard them working, but I see them.

Q Did you hear them blasting?

A Yes.

Q You heard blasting?

A Yes sir.

Q How many blasts the first day?

A Once in the forenoon—am not sure, one or two shots.

Q Did you go down to their shaft the evening of the first day they started work there?

A Yes.

Q Were you there when they were working that day?

A They just quit when I got down there.

Q How deep were they at that time?

A Between six and seven feet.

Q Are you sure that was the first or second day?

A I am sure it was the first day.

Q What kind of a looking shaft did they have at that time—what size was it?

A It was probably 3½ feet wide—and I couldn't tell exactly how long—never guessed very close.

Q Did you see a hole close to that one that they started?

A There were several holes around there, but I never paid attention to how close they were to the shaft.

Q Did you see one when you stood at the shaft there that Campbell and Tobin were sinking, and looking back to the—towards the Quigley tunnel on the right hand side—did you see a hole?

A Well, I remember one hole is towards the south but a little below.

Q That is up Moose Creek?

A Yes.

Q How close is that one to the one they were working in?

A I believe fifteen or twenty feet.

Q What was the condition of that hole at that time?

A I never looked.

Q Do you know whether it was an old hole or a new one?

A I believe it is an old hole.

Q Do you know whether there was any water in it?

A I don't know—I never looked at it—was never right close to the hole.

Q Just tell the court whether or not this hole that you saw Campbell and Tobin in the first evening they were working there—if that is the same hole they worked in afterwards?

A Yes.

Q Do you know whether or not they went into any other?

A Not since I come there the first day.

Q Did that hole you saw them working in the first day there look like a new hole or an old hole sunk the year before?

A It looked to me like a new hole—am not sure—when throwing out fresh dirt, it looks like a new hole.

Q Was it straight down from the top?

A I never paid attention after the first foot or two—from there down it was a square hole.

Q Did it have any appearance of sloughing in at all?

A I never examined it at all—never paid attention.

Q Now, you stated that they were six or seven feet deep?

A Yes.

Q I understood you to say before it was three feet deep the first day.

A I never said that.

Q Did you ever go and examine—oh, did you ever see any new hole around there besides this one Campbell and Tobin sunk in that time?

A No, I don't think I see any—never looked for any.

MR. ROTH: That is all.

Cross Examination

BY MR. STEVENS:

Q You say you were working in the tunnel—Quigley's tunnel—the day that Campbell and Tobin started to work there?

A Yes.

Q And when did you—where were you when you heard the shots?

A In the tunnel.

Q And when did you come out?

A By noon.

Q Did you see Campbell and Tobin there when you came out at noon.

A They was there, yes.

Q Did you go down where they were working at noon?

A No.

Q When you got dinner, did you go back in the tunnel the same day?

A The same day.

Q When did you come out of the tunnel again?

A I wheeled out d rt for three-quarters of an hour and went back again, and stayed until five o'clock.

Q You quit at five o'clock?

A Yes.

Q You came out of the tunnel at five o'clock?

A Yes.

Q When you came out of the tunnel at five o'clock, did you go down to where Campbell and Tobin were sinking?

A Yes.

Q Were they there?

A Yes.

Q Was that the same place they afterwards went on down to bed-rock?

A The same place.

Q Did you have any—when you first went there, where was Campbell?

A Campbell was with Tobin alongside the hole.

Q Campbell was alongside the hole—not in the hole?

A No.

Q Where was Tobin?

A In the hole.

Q When you came up there?

A Yes.

Q Was the hole deeper than the length of Mr. Tobin?

A Something about ten or twelve inches over his head.

Q Tobin was standing in the bottom of the hole and it was something like ten or twelve inches above his head to the mouth of the hole?

A Yes.

Q Did you see Tobin come out of the hole?

A Yes.

Q How did he get up?

A He put up a pick on the corner of the shaft,

stepped one foot on the pick and give his hand to Campbell.

Q Tobin stuck a pick in—he leaned a pick against the hole and stepped on the pick?

A Yes.

Q And Campbell reached down and give him a hand?

A Yes.

Q And helped him up?

A Yes.

Q Was anything said at that time by you or by either one of the defendants about the hole or what they had done?

A Just told them for a joke, I says, "You fellows do more work in one day than I do in a week."

Q Who said it?

A I said it to him.

Q To who?

A To both of them.

Q You said in a joking way that those fellows did more work in one day than you did in a week?

A Yes.

Q What did they say?

A Nothing—just laughed.

Q Do you remember any other conversation?

A No.

MR. STEVENS: That is all.

Re-Direct Examination

BY MR. ROTH:

Q Did you go down there pretty regularly every day to see them?

A Yes.

Q Every day?

A Not every day, but don't think I missed more than one time.

MR. ROTH: That is all.

MR. STEVENS: That is all.

GEORGE BLACK, called as a witness for defendants, but is not present.

JOSEPH DALTON, called as a witness for defendants, being duly sworn, testified:

Direct Examination

BY MR. ROTH:

Q What is your name?

A Joseph Dalton.

Q Where do you reside?

A In the Kantishna.

Q How long have you resided there?

A Seventeen years.

Q Are you acquainted with William Grant, the plaintiff in this case?

A Yes sir.

Q Are you acquainted with William Campbell, one of the defendants?

A Yes sir.

Q Are you acquainted with Mr. Tobin, one of the defendants?

A Yes sir.

Q Are you acquainted with O. M. Grant?

A Yes sir.

Q Where do you reside?

A I live at the mouth of Eureka in the Kantishna.

Q Are you acquainted with the Red Top Lode Mining Claim?

A Yes.

Q Do you remember when discovery was made on that claim?

A Yes.

Q Have you kept in touch with the work done on the Red Top?

A Yes, I have.

Q Are you any ways interested in that claim?

A No, I am not.

Q Are you acquainted with Joseph B. Quigley?

A Yes.

Q How long have you known him?

A I have known him about twenty years.

Q Do you—are you acquainted with the Silver King Lode claim that adjoins the Red Top Lode Claim?

A Yes.

Q Were you present there on the day that the discovery shaft was started on that claim by these defendants?

A Not on the day.

Q When did you first see it with reference to the time it was started?

A I don't know whether it was started that day or not—it was down about four or five feet when I went by in the morning.

Q Do you know whether or not the lode that had been discovered on the Red Top Lode Claim by Joseph B. Quigley was a well known lode in that mining district?

A Yes, I do.

Q Was it?

A Yes.

Q At the time that these defendants started their shaft on the Silver King Lode Claim, to what extent had that lode that Quigley was working on—to what extent was it known in that mining district?

A He had a line of holes probably in line about 700 or 800 feet, and there was rock across two claims staked across the river.

MR. STEVENS: We move that the answer be stricken out. The question was to what extent was it generally known, that is, the lode Quigley located.

MR. ROTH: He was answering that question.

MR. STEVENS: I assumed you meant the Red Top Claim.

MR. ROTH: I am talking about that lode—to what extent known.

COURT: I think that was your question.

MR. ROTH: To what extent was that lode upon which Quigley worked—to what extent was it generally known to exist in that mining camp at that time?

(Mr. Stevens enters objection. Objection sustained. Mr. Roth takes exception which is allowed.)

BY MR. ROTH:

Q Did you make it your business to ascertain whether or not this lode upon which Mr. Quigley made his discovery extended through the country?

(Mr. Stevens enters objection on the grounds first, being leading and suggestive; second, immaterial and improper examination. Objection sustained. Mr. Roth notes exception which is allowed.)

Q Mr. Dalton, I will ask you to state whether or not this same lode at that time was known to exist across Moose Creek from the Red Top Lode Claim.

(Mr. Stevens objects to question in that it asks for a conclusion, there being only one way to demonstrate it and that is to open it. Court directs that question should be directed to witness as to whether it was known by him, and cross examination on facts on which he bases his statement.)

Q Was that same lode known to you to exist on the other side of Moose Creek from where Mr. Quigley located it?

(Mr. Stevens further objects to question in that it asks for a conclusion of the witness. Objection over-ruled. Exception noted and allowed.)

A Yes, to the best of my knowledge.)

(Mr. Stevens moves that answer be stricken out as witness does not show he has any knowledge. Motion denied. Exception taken and allowed.)

Q How well acquainted were you with the ground where these defendants started that shaft, Mr. Dalton,—I mean on the Silver King Lode Claim?

A I have known it for years.

Q Did you see it frequently about the time they were working there?

A Yes.

Q How did it come you saw it frequently?

A I passed by there every morning going to work and evenings sometimes—probably five mornings out of a week.

Q Where were you working?

A I was working on the lode claim—on Quigley's lode.

Q State whether or not you know that these defendants continued to work in that same shaft until they bed-rocked it, or whether they were working in any other hole in that immediate vicinity?

A In the same hole until they got to bed-rock.

Q State whether or not you noticed a hole in close proximity to that shaft they sunk.

A Yes, there was one about fifteen or twenty feet from it.

Q What direction from the shaft?

A Up river.

Q Up Moose Creek?

A Yes, up Moose Creek.

Q Standing at their shaft and looking up at Quigley's tunnel, which side of you would it be on?

A The right hand side.

Q And how far do you say it was away?

A I don't know—I never measured—probably fifteen or twenty feet—maybe not that.

Q What was the condition of that hole at that time?

A There was water in it—it was dug the fall before and caved in from the top.

Q Tell the jury whether there was any other new hole in the immediate vicinity of this shaft—that is, within twenty or twenty-five feet of this shaft that these defendants were sinking at the time, or during any of the time that they were sinking that shaft.

(Mr. Stevens enters objection. Objection overruled. Exception taken and allowed.)

A There was no other hole there.

Q I mean a new hole?

A No.

Q I will ask you to state whether or not on the 9th or 10th day of November, 1920, in your cabin on Eureka Creek, yourself and O. M. Grant being present, if the following conversation took place in substance, in which you asked O. M. Grant why he didn't bottom one of those holes on the Hill Bench and pick up Quigley's lead, and to which he replied that he suggested to Billy Grant to put a windlass on and bottom it, and he (O. M. Grant) could get his partner, Frank Giles or Childs, to help him, and they would pick up that lead, and that he (Billy Grant) said, "To hell with it, you might have to go 100 feet" and that he was not holding it for mining purposes—that he was holding it for Aitken for a warehouse site?

A Yes.

Q In the month of January of this year, which would be last month, did you go on to the ground which is known and designated as the Hillside Lode Placer Claim with—I mean the Hillside Bench Placer Claim—with William J. Campbell and Jack Tobin?

A Yes, I did.

Q How did you come to go there?

A They asked me to go there and help measure the claim.

Q Did you assist in the measurements?

A Yes.

Q Where did you commence to measure?

A Commenced at the northeast post.

Q You call it the northeast?

A The northwest post.

Q It is designated as the southwesterly post you commenced at.

A Yes, this corner here. (Indicating on map)

Q Did you examine the stake there?

A Yes.

Q Whose stake was it, if you know?

A It belonged to Jack Hamilton.

Q What was written on the stake?

A I couldn't read anything on it.

Q What kind of a stake was it?

A A green cottonwood cut about eight years ago and put in there.

Q From there where did you go?

A Measured over to the south corner post over there.

Q That would be designated, as we have been designating it, as the southeast.

A The southeast.

Q What was the distance between those two—have you a memorandum in your pocket made at that time?

A Yes (Refers to memorandum) 1395 feet.

Q Who did the measuring?

A Me and Mr. Tobin for a while.

Q Did you yourself take note to see that that measurement was correctly made?

A Yes.

Q Now, at that southeast corner, what did you find there?

A Found a post but couldn't read any writing on it.

Q What kind of a post?

A That was a cottonwood post too—the same as the other post.

Q Do you know whose post?

A Yes, Hamilton's post of the bench claim.

Q From there where did you go?

A Went up to measure up to the post over here, (indicating)

Q That is designated the northeasterly?

A Yes.

Q What was the distance to that?

A 605 feet.

Q What is the character of the surface between those two posts?

A It goes up in a grade up hill.

Q Is it steep?

A The first 200 feet is not very steep and the last perhaps 150 feet is steep going up.

Q What kind of stake did you find there?

A A dry spruce stake.

Q What size?

A Probably about three inches square—am not certain of the size.

Q What was written on that stake?

A "N. E. post. Hillside Bench Claim. Billy Grant, Locator."

Q What kind of a stake did it appear to be with reference to age?

A Fresh put in—fresh writing on it—you could

read the writing.

Q From there where did you go?

A Measured from there to this post. (indicating)

Q Which post is that? That has been designated always here as the northwesterly stake—the one above Quigley's house?

A Yes.

Q What was the distance between those two stakes?

A 1296 feet.

Q What was the condition of the surface between those two stakes?

A That was a steep hillside.

Q And where did you measure from there?

A Back down hill.

Q Down to the stake you started from first?

A Yes.

Q What was the distance between those stakes?

A 778 feet.

Q I will ask you to state whether or not those measurements are surface measurements.

A Yes, surface measurements.

Q Did you take into consideration the steepness in making the—(interrupted)

A No.

Q What was written on that stake above Quigley's house there which would be the northwesterly corner stake?

A Couldn't read much of anything—Billy Grant's name—just the bare name and an arrow.

Q Was there anything else on it?

A No, not that you could read.

Q Did you measure the distance from this line between the two posts which you designate as Jack Hamilton's posts, which would be the southerly side line of that Hillside Bench Placer Claim, and the discovery shaft of Campbell and Tobin?

A You mean from here to here? (indicating)

Q Yes, what is that distance?

A 441 feet.

Q Did you measure the distance from the center of the shaft to the line of the—to the lower line of the Red Top Lode Claim?

A Yes.

Q What was that distance ?

A 25 feet.

Q Did you measure the distance from there up to where the lode was exposed in the tunnel?

A Yes.

Q What was it?

A 165 feet.

Q Did you measure the distance from there up to the line between the stake of the Bench Claim above Quigley's cabin and the stake that you designate as a new stake that had plain writing on it?

A Yes.

Q What was that distance?

A 114 feet.

MR. ROTH: You may cross examine the witness.

Cross Examination

BY MR. STEVENS:

Q Did you assist in making this large map on the

wall which has been designated as Defendants' Exhibit No. 2?

A No sir, I did not.

Q Were you present when Tobin was making it, or part of it?

A I was in one night and it was on the wall—think it was done.

Q Where was it?

A In Mr. Roth's office.

Q Since this suit was started?

A Yes.

Q You say you saw Campbell and Tobin working in the shaft that they afterwards put down to bed-rock?

A Yes.

Q You don't know whether it was the first day or not they started—whether it was the day they started or not?

A No.

Q But the time you saw them they were down in the hole about four or five feet?

A Yes.

Q You don't know the date?

A No, I do not.

Q Some time in May 1921?

A Yes, sometime about the last of May.

Q Mr. Dalton, you stated as I recollect, that to the best of your knowledge, the lode, or a lode that you say exists across Moose Creek on the other hill is the same vein or lode that Quigley has uncovered in the Red Top Claim?

A Yes.

Q That is only an opinion of yours that it is the same, isn't that all?

A I asked Mr. Stewart—(interrupted)

Q Never mind. I am asking you if that is your opinion.

A Yes.

Q And you base that opinion upon the grounds that it is practically in line with it? Is that one of the reasons?

A Yes, and from a mining engineer's standpoint.

Q Is it practically in line?

A Yes.

Q Practically a straight line?

A No, there is a dip to it.

Q There is a dip?

A Yes.

Q There is a dip to the vein?

A Yes.

Q Did you take into consideration the dip of the vein in order to ascertain whether it is in straight line with it?

A How is that question again?

Q When you say it is in a straight line, is that line—(interrupted)

A Not exactly a straight line.

Q You said there was a dip?

A All ledges dip.

Q Don't some go straight down?

A Yes, some do.

Q Then they don't all dip? That is true?

A Yes.

Q Sometimes a vein or lode will dip one way and sometimes in another direction?

A Yes.

Q Sometimes a ledge will run in a straight line and sometimes it won't? Isn't that true?

A Yes.

Q Isn't it a very rare occurrence where a lode will run practically straight?

A I never had much experience in quartz.

Q You have been in the Kantishna some seventeen years?

A Yes.

Q Has your experience and efforts been in placer?

A Placer until last summer.

Q Last summer you began on quartz?

A I used to work on quartz in the winter time.

Q You never opened very many veins?

Q No.

Q You have read a good deal about mining quartz?

A Yes.

Q You know it is very frequent that the strike of a vein, or the direction of a vein will be very irregular?

A Yes.

Q They sometimes make a sharp turn and almost go the other way? Isn't that true?

A That I don't know.

Q You have read a good deal on the subject?

A Yes.

Q Does it sometimes occur that a vein will turn

around and go at right angles? You have seen lots of cuts of that?

A No, I haven't.

Q Did you ever read any of "Lindley on Minerals?"

A Have read very little on quartz.

Q You have seen pictures of veins running in various directions? you have seen those lots of times?

A Yes.

Q Then if this particular vein Mr. Quigley has located—if that doesn't run in practically a straight line, why the lode that you say exists across the river on the next hill wouldn't be the same vein, would it?

A That I don't know—I couldn't answer.

Q I understood one of the reasons you thought it was the same vein was because it would be virtually in a straight line with Quigley's?

A I am taking another man's theory for mine.

Q You don't know anything about it yourself?

A No.

Q Has the vein that Quigley has discovered there and located as the Red Top ever been opened up between there and the next hill you spoke of across Moose Creek, with the exception, possible exception of Campbell and Tobin's shaft?

A Well, TenEyck and Connelly have a tunnel in one.

Q Where is that?

A Right below.

Q Where is this tunnel?

A Probably 1500 feet up hill from Moose Creek.

Q How far about is that from the mouth of Quigley's tunnel.

A The two quartz claims and probably a fraction of the other—maybe about 3,100 feet from the Quigley tunnel to Mr. TenEych's and Mr. Connelly's tunnel.

Q Do you know when Mr. TenEych and Mr. Connelly run that tunnel?

A Yes, this winter.

Q That was not run—not started at the time Campbell and Tobin went on this ground and started their shaft?

A No, Hamilton had it staked.

Q Never mind—the question is, at the time, TenEych and Connelly hadn't any work done at all on their tunnel—prior to the time Campbell and Tobin went on this ground?

A No, they hadn't.

Q Prior to the time Campbell and Tobin went on the ground in controversy, had any vein or lode been uncovered across Moose Creek up on the hill there?

A Hamilton done a little work across there.

Q Where?

A On the same place where TenEych and Connelly run this tunnel.

Q Something over 3,000 feet?

A Yes.

Q In the neighborhood of three-quarters of a mile?

A Yes.

Q Had Hamilton done a little work there prior to the time that Campbell went on the ground?

A Yes.

Q How long prior?

A I think he staked in the spring.

Q Away across Moose Creek? Did you ever examine any of that ore?

A Yes.

Q Similar in character, is it—

A Yes.

Q —to the substance that Quigley has taken out?

A That I can't tell—am not expert enough.

Q Do you know of any other place where a lode has been uncovered prior to the time Campbell and Tobin went on this ground, in that vicinity?

A No, I do not.

Q You don't know as a matter of absolute certainty that Campbell and Tobin's lode that they uncovered is the same vein that Quigley uncovered some 160 feet above, do you?

A No.

Q It has never been opened up or demonstrated?

A Only in line.

Q It is simply in line and the same character rock?

A Yes.

Q You believe it is the same lode, don't you?

A Yes, a mining engineer told me it was.

Q I asked if you believed it.

A Yes, I believe it.

Q And mining engineers—it is only a matter of opinion on their part, isn't it?

A Yes.

Q There is no such thing as knowing without opening it up there?

A Mr. Stewart said it was—and that proves it was.

Q Who proves it?

A Campbell and Tobin, they proved it went through.

Q Who is Mr. Stewart?

A A mining engineer.

Q Did he open up a tunnel and find out that it was a continuance of the same lead?

A No, he told me the same lead went there.

Q He told you in his opinion it was the same lead?

A Yes.

Q He don't know any more about it than you do about its actual existence?

A I would take his theory.

Q I will ask you if Mr. Stewart had any knowledge that you know of that it was the same 'ode, any more than opinion and theory?

A No.

Q Mr. Roth asked you about a conversation that took place in your cabin near the mouth of Eureka Creek on the 9th or 10th of November 1920. You remember that conversation?

A Yes, I do.

Q Who were present?

A Me and Mr. Grant—just the two of us present at the time.

Q You don't think anybody else was present?

A No.

Q Mr. Roth asked you about the conversation

where you and O. M. Grant and William Grant, the plaintiff, were present,

MR. ROTH The question did not so state.

Q Who were present? You and Billy Grant were present?

A Me and O. M. Grant.

Q William Grant wasn't there at all?

A No sir.

Q No one was present except you and O. M. Grant?

A No.

Q The mouth of Eureka Creek was not a great ways from this property?

A About one mile.

Q Right down near the Recording Office?

A Yes.

Q Now go right ahead and state what was said and who said it at that time.

A Grant came down there and I asked him what he was doing and he said he was doing assessment work down on the claim below Quigleys. I asked him how far down he went and he said he had one or two holes down—wouldn't be certain—and I asked if he was going down any further. He said no, that he suggested to Billy Grant to put a windlass on and he would get his partner Giles to help and bottom the holes and strike Quigley's lead, and Billy Grant said, "To hell with it, you might have to go 100 feet" and he was not holding it for mining purposes—was holding it for warehouse purposes.

Q Billy Grant was not—you didn't hear Billy Grant say it?

A No, I never did.

Q What else was said?

A I told him the work he was doing was no benefit to the claim.

Q What did he say?

A He said he didn't care—it was his orders to sink the holes.

Q It was his orders to sink lots of holes?

A Yes.

Q What else was said?

A I don't remember any other part of the conversation.

Q Was there anything else said on the subject?

A No, not that I remember—we talked about claims in general.

Q You are satisfied you have given us the substance of the conversation?—do not expect the exact words—you are sure about that?

A Yes, I was anxious for him to go down in the hole and bottom it.

Q That was in November 1920—a year ago last November?

A Yes.

Q Did you make a memorandum of what O. M. Grant said at that time?

A No, I did not.

Q How did it come you remembered so well so long ago?

A I was anxious to see him go down in the hole and pick up that lead.

Q You visited Mr. Roth's office?

A Yes.

Q And told Mr. Roth about this conversation?

A Yes.

Q And Mr. Roth wrote it down at your suggestion?

A Yes.

Q You have a good memory, have you?

A Yes.

Q And you were anxious to find out all you could about the lode at that time?

A What time do you mean?

Q The time you had this conversation with O. M. Grant.

A Yes, I was anxious for him to go down in the hole and pick up that lead.

Q You were interested?

A No financial interest.

Q For that reason you were particular to remember that particular conversation?

A Yes.

Q You would remember any other conversation that you had with any of those parties about the same property?

A Yes sir.

Q Equally as well?

A Yes.

Q And if any conversation was had since that time, you would be more apt to remember?

A Yes, I would.

Q I will ask you, Mr. Dalton, to state whether or not about June 2, 1921, at or near the mouth of Eureka Creek in the Kantishna Precinct, Alaska, at your garden—in your garden on the bank of or near the

bank of Moose Creek, you and O. M. Grant only being present, whether you had the following conversation in substance: that you (Dalton) said that Campbell and Tobin were getting or finding big chunks of high grade in one of your holes (talking to O. M. Grant and referring to one of the holes that O. M. Grant put down for William Grant) about four feet deeper than you went (talking to O. M. Grant) and that O. M. Grant said to you in substance, "What do they want to go into my hole for?" and that you (Dalton) said to Mr. O. M. Grant, "They did start a hole of their own this way (pointing or referring up in an up-stream direction from Moose Creek) from your hole, but the surface water was bothering them and they couldn't get down without timbering, and they wanted to get down and locate the ledge before Billy Grant got back from the Landing (referring to Roosevelt)." You may state whether or not that conversation occurred.

A No sir.

Q At that time and place and in substance, you say that did not occur?

A Not on the 2nd day of June.

Q Did that conversation occur round about that time?

A Not that part—not in substance.

Q I am asking whether or not that conversation as I have stated occurred in substance.

A No, it did not.

Q Did that same conversation occur in substance about that time?

A I had a conversation.

Q Wait a minute—if I am mistaken in the date, that is immaterial—I want to know if that conversation occurred about that time.

A I had a conversation.

Q Answer 'yes' or 'no' whether that conversation occurred in substance about the 2nd of June, 1921.

A No, it did not.

COURT: The witness may answer regarding the conversation—the witness may make any statement voluntarily with reference to the question you ask him regarding this conversation.

A Before they started their hole—I know it was only started some time the last of May, and I was in the garden and talking to Grant—it must have been around the 24th of May that I was talking to O. M. Grant. We had a conversation about staking the claim—first we heard—Tobin had been up to my cabin and I asked him if he was going to sink and he told me he was.

COURT: You may state what the conversation was. You needn't state what Tobin told you.

A I told Grant that Tobin thought he was going down in one of those holes—that he would save 12 ft. if he would go down—before they started a hole.

Q That was when?

A It must have been around the 24th of May I think—about the time I was planting my garden.

Q The 24th of May, 1921?

A Yes, last year—between the 24th and the first of June.

Q Was that conversation in your garden?

A I had several conversations.

Q With who?

A O. M. Grant.

Q Was any one else present?

A No, I don't think so.

Q And you did tell O. M. Grant—did you know at that time that Campbell and Tobin had started?

A No, at that time they weren't started.

Q Campbell and Tobin have both testified they started on the 22nd of May. You say this conversation was on the 24th, so they must have started two days before.

A I wouldn't be certain about dates—it was around the garden somewhere, but I wouldn't be certain about the date—I thought it was around the 24th—I talked several times after they went down—talked about the float.

Q You were discussing with Grant in that conversation what Tobin and Campbell had done with reference to whether or not they had gone down in the hole O. M. Grant had started?

A They led me to believe first that they were going down.

Q Who?

A Tobin.

Q That was before they started?

A Yes, before they started.

Q And did you ever tell anyone they had led you to believe that?

A No, I did not—not after they went down and I see where they started—we all knew they started a new hole.

Q But Tobin had told you he intended to sink in

one of the other holes?

A Yes.

Q The hole that O. M. Grant had started?

A Yes, he said it would save ten or twelve feet.

Q When was it Tobin told you that—how long before Tobin and Campbell started to sink?

A I wouldn't be certain about the date.

Q About how long before? I am referring to the time you say Tobin led you to believe that he and Campbell were going to sink in that hole and save 12 feet.

A I wouldn't be certain.

Q How long was that prior to the time, if you know, that Campbell and Tobin started to sink?

A I wouldn't be sure—over a week anyway—I was up and down to Quigley's working on this quartz, and couldn't tell the exact date—probably two or three days.

Q You told that to O. M. Grant?

A I told him it was their intention, yes.

Q Then it was O. M. Grant that told you that Billy Grant had told him, or had said, "To hell with it"—that is, on the subject of putting the hole to bed-rock, and that O. M. Grant had told you that Billy Grant said he might have to go 100 feet, and he didn't locate it for mining purposes anyway, and that all he located it for was for Aitken for warehouse purposes?

A Yes.

Q That is what O. M. Grant told you Billy Grant told him at that time?

A Yes.

Q And that was on the 9th or 10th of November, 1920?

A Around that time, yes.

MR. STEVENS: That is all.

Re-Direct Examination

BY MR. ROTH:

Q In that conversation did you—that you had with O. M. Grant in the garden, or any one of the conversations at or around your garden near the bank of Moose Creek—did you tell him, O. M. Grant, that Campbell and Tobin were finding big chunks of high grade in one of his holes?

A No, I did not.

Q Did you talk to him about their finding chunks of high grade?

A I did.

Q What did you tell him?

A I told him they were finding high grade as they were going down—he was inquiring what they were doing.

Q Did you tell him they were finding it about four feet deeper than he had gone?

A No.

Q Did he ask you this question, "What do they want to go into my hole for?"

A No, he never did.

Q Did you tell him that they had started a hole of their own, but that they couldn't go down with it on account of striking surface water?

A No, I did not.

Q Did you tell him they were in a hurry to get

down before Billy Grant got back?

A No, I did not.

Q Was it ever in your mind at all?

(Mr. Stevens enters objection. Objection sustained. Mr. Roth takes exception which is allowed.)

Q You said on cross-examination that you were interested in that work done there by Campbell and Tobin?

A Yes.

Q Were you interested in that before they started to work that—on that ground they were working on?

A Yes, I was. Me and Hamilton was talking about staking it.

Q You and Jack Hamilton?

A Yes.

Q How long before these boys put up their stakes?

A Probably two weeks—we figured going half on the ground.

Q What ground do you refer to—Hamilton's ground?

A This ground down here (indicating)

Q What is the name? Horseshoe Bench?

A Yes.

Q What is the next claim below that?

A I don't know.

MR. ROTH: That is all.

Re-Cross Examination

BY MR. STEVENS:

Q You say it was about two weeks before Campbell and Tobin started to sink their shaft that you

and Jack Hamilton were figuring on locating this same property?

A Yes, some time before that.

Q And that in order to do that you were going on Jack Hamilton's placer claim below here, with Hamilton's consent, and sink to see if you could find a lode or vein?

A Yes.

Q And if you found a lode or vein within the boundaries of Hamilton's claim, you understood you could claim 1500 ft. along the strike of the lode or vein from your discovery shaft? Isn't that true?

A Yes, that is it.

Q But you never contemplated going on to Grant's placer claim to sink to find anything?

A We figured it would be too deep there.

Q It is no difference why you figured—you didn't contemplate going within the boundaries of Grant's placer claim to prospect to find the lead?

A No.

MR. STEVENS: That is all.

MR. ROTH: That was because you figured it was too deep and that was the only reason?

A I figured on dumping—if in with Hamilton, I could get dumping ground.

MR. STEVENS: You have to have dumping ground with quartz? It is very important to have dumping ground?

A Yes, you have to have room.

MR. STEVENS: That is all.

MR. ROTH: That is all.

Session 2:00 P. M. February 8, 1922.

JOSEPH DALTON, re-called as witness for defendants, being heretofore sworn, testified:

Further Direct Examination

BY MR. ROTH:

Q Mr. Dalton, I will ask you to state whether or not you know a man by the name of John Biglow?

A Yes, I do.

Q Where did you first meet him?

A I met him and Mr. Grant on this claim in litigation—Mr. Grant introduced me.

Q Who were with them?

A Mr. Grant—Billy Grant.

Q No one else?

A No.

MR. ROTH: That is all.

Further Cross Examination

BY MR. STEVENS:

Q Where is Mr. Biglow now?

A In the Kantishna.

MR. STEVENS: That is all.

MR. ROTH: That is all.

GEORGE BLACK, called as witness for defendants, being duly sworn, testified:

Direct Examination

BY MR. ROTH:

Q What is your name?

A George Black.

Q What was your business in the month of June, 1921?

A Freighting in the Kantishna.

Q How were you freighting in the Kantishna?

A By steamboat.

Q Do you know a man by the name of John Biglow.

A I do.

Q State whether or not John Biglow went with you on your boat up the Kantishna River.

A Biglow—he went with me—I landed at Roosevelt on the 22nd of June according to my book—with Biglow.

Q With Biglow?

A Yes.

Q The 22nd day of June, 1921?

A 1921.

Q When you arrived there, do you know how long John Biglow stayed at Roosevelt?

A We arrived about five o'clock in the morning—he told me he was starting out in a few hours.

MR. STEVENS: Wait a minute—

Q I don't care what he told you—did you see any preparations there to go out at that time?

A I see them getting ready to start.

Q How?

A A fellow by the name of Clark—Biglow told me—(interrupted)

Q Never mind what Biglow told you. How were they getting ready? what were they getting ready?

A They had a team—had two horses, I guess.

Q And a wagon?

A A wagon yes.

Q Did you see him start?

A No, I didn't see him start.

Q Did you see him any more that day?

A I didn't see anything of him.

Q How long did you stay there?

A Left about noon the same day.

Q Do you know Mace Farrar?

A Yes.

Q Did he go with you on that trip?

A No, he wasn't with me.

Q Do you know Dr. Laymon?

A Yes.

Q Was he on that trip?

A No.

Q And Mr. Bob Ellis and his son?

A I don't know Mr. Ellis or his son.

Q Do you know what they did go up on, if they did go up at all?

(Mr. Stevens enters objection to what any of them went up on, except John Biglow who went with him. Court states does not see the connection but instructs witness to answer question. Objection overruled.)

Q Did you see Dr. Laymon and Mace Farrar on that trip?

A Yes, I passed them on the river.

Q Where?

A About twenty-five miles from Roosevelt.

Q Before or after you left Roosevelt?

A After.

Q With whom were they?

A Moody.

Q What time did you leave Roosevelt, did you say?

A On that trip I was up the lake—left Roosevelt at noon the same day for the lake.

Q And where did you go from there?

A From Roosevelt I went up the lake and back down.

Q To Roosevelt?

A Yes, back to Roosevelt.

Q When did you get back there?

A About the 28th of June.

Q And when was it you met Moody?

A Along about the 1st of July I met him.

Q And where did you meet him?

A About twenty five miles below Roosevelt.

Q Which way was he going?

A He was going up.

Q Do you know who was with Moody on that trip—who was with him, do you know?

A Mace Farrar and Dr. Laymon were the only ones I see that I knew.

MR. ROTH: You may cross examine.

MR STEVENS: No cross examination.

RICHARD GEOGHEGAN, called as witness for defendants, being duly sworn, testified:

Direct Examination

BY MR. ROTH:

Q What is your name?

A Richard Geoghegan.

Q Just for the purpose of fixing a date, I will

hand you a document (hands him document), and ask you to state whether or not as a Notary Public you took deposition of William Grant on behalf—I mean of William Campbell?

A I didn't take it as a Notary Public—it was taken before Mr. Mack.

Q Did you have any part in the taking of the deposition?

A I took down shorthand and afterwards wrote it out.

Q During the course of the taking of the testimony in that deposition, was a notice of location handed to you?

A You handed me a notice of location, I believe.

Q And what did you do with it?

A I afterwards made three copies.

Q And what did you do with the copies?

A I think two I delivered to you and one to Mr. Stevens.

Q And what became of the original delivered to you?

A So far as I recollect, it was handed back to you with the copies.

Q Is your mind clear on that?

A No, I don't distinctly recollect the act, but think that it would be the natural thing—I made copies in triplicate and they were given back right away, and I imagine the instrument copied was handed back at the same time.

Q Was that the original notice of location?

A I don't know whether it was the original or not.

Q Did you make a true copy of that document handed to you?

A I did.

Q And the copy you gave me—was that a true copy?

A It was.

Q I will ask you to look at this document and state whether or not you made that, and if so, if it is a true copy of the instrument that you copied from?

A No, I didn't make this, but think I can explain how it was made. I think I dictated from the original to Miss Fisher, or that Miss Fisher made the copy, because this was not written out by me, but by Miss Fisher at my dictation—it is written on the typewriter that Miss Fisher uses.

Q Do you think it is a true copy?

A Yes, I believe it is a true copy of the document handed me at that time.

Q Did you compare it?

A Yes, I compared it with Miss Fisher.

Q With the original?

A With the original, yes.

MR. ROTH: That is all.

Cross Examination

BY MR. STEVENS:

Q Mr. Geoghegan, the paper from which you made this copy—you don't know whether that was an original location notice or not?

A I wouldn't pretend to say—simply copied what was handed to me by Mr. Roth.

Q It was what Mr. Roth stated was a location?

A Yes.

Q Do you know whether or not it was written on any printed form, or not?

A I don't think it was written on a printed form.

Q Do you know whether it was in long-hand or on the typewriter?

A It was in typewriting, I believe—that is my recollection, but I wouldn't swear to it—there may have been parts filled in in long-hand, but I think it was in typewriting.

Q Wasn't it a printed form filled in in long-hand?

A I wouldn't really pretend to recollect that at this time.

Q You haven't any definite recollection of it?

A No, I haven't any definite recollection.

Q You do remember Mr. Roth handed you that paper and requested you to make some copies, and you returned it to Mr. Roth?

A Yes.

Q Your impression is that you did return it to Mr. Roth?

A That is what I think.

Q You are certain you didn't return it to me?

A No, I didn't return it to you.

Q But you did give me a copy?

A Yes, I did give you a copy.

Q And you may state whether or not—just wait a minute—the paper you have now which you say is a copy—that is, which you say you made as a copy—the paper Mr. Roth just handed to you—I Would like to have you hand it to me. (Witness hands Mr. Stevens the document)

MR. STEVENS: We offer this in evidence as part of the cross examination of this witness, and ask that it be marked plaintiff's Exhibit "H".

(Court rules that it may be admitted, if there is no objection. There being none, it is admitted and marked Plaintiff's Exhibit "H".)

Q Mr. Geoghegan, I will ask you to examine that instrument (hands him paper) and state whether or not that seems to be a carbon copy of this other instrument that is Plaintiff's Exhibit "H".

A Yes, it appears to me to be the copy I made, only I think this is the original copy I made, and I think that is a carbon copy—it is the same instrument anyhow.

Q I am going to read Plaintiff's Exhibit "H" to the jury, and I want you to follow to ascertain whether or not what you have in your hand is a copy of this.

Mr. Stevens reads Plaintiff's Exhibit "H" to the jury, as follows:

"(Copy) Notice of location of Quartz Mining
"Claim. Notice is hereby given, that the under-
"signed, a citizen of the United States, having
"discovered at the place where this notice is
"posted on this the 6th day of June, 1921, a
"vein or lode of quartz or other rock in place
"bearing gold and other valuable minerals,
"does hereby locate and claim the same as the
"Silver King Lode Mining Claim. The general
"course of the vein or lode as far as the same
"can now be ascertained is southwesterly and

"the undersigned hereby locates and claims
"the same 1470 feet in a southerly direction
"and 30 feet in a northeasterly direction from
"the point of discovery, where this notice is
"posted and a total width of 600 feet, the same
"being 300 feet on each side of the center of
"said vein. This claim is situate on the left
"limit of Friday Creek and the right limit of
"Moose Creek in the Kantishna Mining and
"Recording Precinct, Alaska. Notice dated and
"posted this 6th day of June, 1921.

"(Signed) J. L. Tobin
William J. Campbell.
"Locators.

"Indorsed:

"No. 3147. Filed for record at the request of
"J. L. Tobin and William J. Campbell on the
"7th day of July, 1921, at 35 min. past 8 P. M.
"and recorded in Vol. 1 of General page 207,
"Kantishna Recording District.

"C. Herbert Wilson
Recorder."

Q Is the copy you have in your hand a copy of what I read?

A Yes sir.

Q That is the copy you handed me at the—after you took the deposition?

A I can not say it is the identical copy, but I handed you a copy.

Q What Mr. Roth has called the original of the paper from which you made this copy—did you ever

see that since you handed it to Mr. Roth, that you know of?

A No.

MR. STEVENS: That is all.

MR. ROTH: That is all.

R. F. ROTH, counsel for defendants being duly sworn, voluntarily testified, as follows:

At the time of the taking of this deposition of Willam J. Campbell in Mr. Mack's office, Mr. Stevens stated that he desired a copy of it, and I told Mr. Goeghegan—it was agreed between Mr. Stevens and myself that Mr. Goeghegan take the original and copy it, and at first I understood that it was to be—that was my recollection at the commencement of this trial—it was to be filed with the deposition, but since then, in figuring the thing out carefully, I remember now it was for the purpose of getting a copy of it that it was delivered to Mr. Goeghegan. I have no recollection of Mr. Goeghegan giving the original back to me. I have made a very careful search in my office among the papers and any other place I thought it might be, for the purpose of finding the original, and I was unable to find it and I don't know where it is now. It is not within my power to get it—I have tried to get it and can't do it, but my recollection is that what was introduced here is a copy of the original. That is all.

Cross Examination

BY MR. STEVENS:

Q You remember that after this case started—in the same day while this case was on trial—the same

day that you and I agreed to have this deposition published—opened—that you met me in the hall just outside of this courtroom and said something in regard to sending down to the Clerk and getting the deposition up here to get that location notice, did you not?

A Yes.

Q And I suggested that you tell the Clerk to bring it up and we would open it? That is true?

A Yes.

Q And when the Clerk opened it, you stepped up to the Clerk's desk and looked for the deposition—I mean looked for this location notice? Didn't you?

A Yes, I expected to find it and was very much surprised that I didn't.

Q You stated in open court that the location notice was with the deposition?

A Well, I don't know that I stated it that strong—I might have said I believed it was where it was, but I was I was mistaken about it, because it was not there, and looking through the deposition, found it was not introduced, but the deposition itself does disclose the fact that Mr. Campbell indentified the signature to it as his signature and the signature of Mr. Tobin to it, as Mr. Tobin's signature—the deposition discloses that.

Q Yes, but isn't it true, you didn't want it to go into the record and, therefore, it was not introduced in the record, but simply we agreed that Mr. Geoghegan could take it and furnish us with copies?

A I didn't object to it going into the record—I might possibly have objected to the original being

put in, but I never objected to the contents of it going into the record, because it wasn't introduced—you didn't offer it.

Q Then, when you stood here at the Clerk's desk looking for that location notice, you thought it was there?

A I have already stated that, Mr. Stevens. I thought it was there and was disappointed in not finding it there.

Q And the first time you ever heard of my being accused of having it was when William Campbell was on the stand, isn't that true?

(Mr. Roth objects to that question in cross-examination. Objection over-ruled.)

Q Isn't that true?

A Yes, I think it is.

Q Mr. Campbell never told you he ever gave that paper to me?

A Yes, he did.

Q Until he said that on the stand?

A No, he said it before.

Q When?

A He said it since he was here, when we were getting ready for the trial here.

Q Then, if he said that, why did you stand here and say before the court that it was in here with the deposition? Why didn't you say, "Mr. Stevens, I want that instrument"?

A Because I didn't think Campbell was right—I thought he was wrong. I told him at the time I thought it was introduced. He says, "no, I think I

gave it to Stevens." And I said, "No, I think it is with the deposition."

Q You didn't believe it was true, and you told the Court and the Clerk and all present that that instrument was with the deposition?

A I thought Mr. Campbell was mistaken—it is not unusual for men to be mistaken.

Q You say Campbell told you that?

A Yes.

Q When did he tell you?

A Well, he told me that a number of times.

Q He did?

A Yes.

Q Didn't you say just a minute ago that the first intimation you had that Campbell claimed he gave it to me was when he disclosed the fact on the witness stand?

A I didn't so intend, and don't think I did.

COURT: Proceed with the examination.

Q You don't think you said in substance within the last five minutes that the first knowledge you had that Campbell claimed that he gave that to me was on the witness stand?

A What I did say was this—in response to your question put to me—that the first time that you were ever accused of having that was when Mr. Campbell stated so here on the stand, and that is true, but that isn't the first time he told me that he gave it to you.

Q Now, Mr. Roth, why didn't you ask me if I had it, or ask me for it when we were talking about it at the door of the courtroom?

A Because I did ask you about it—asked you about it in your office.

Q Didn't the matter come up in my office, and I said I had a copy of the location notice but mislaid it? And didn't I say I probably have two copies, and went through the safe, and said, "Here is a copy."

A Yes, you did.

Q You didn't say anything to me about the original at that time.

A But didn't I ask you if you had the original and the reason—the fact is that Mr. Geoghegan—I went and spoke to Mr. Geoghegan about that in his office, and Mr. Geoghegan told me that he was satisfied he gave it to Mr. Stevens.

Q That original?

A Yes, the original. And I said, "Mr. Geoghegan, I think it was filed with the deposition." I said, "That is my understanding why I gave it to you." He says, "No, I don't think so." He says, "No, I think I gave it to Mr. Stevens," and that is why I asked you about it.

Q In my office?

A Yes, I asked you about it.

Q In my office?

A I just asked for a copy and was satisfied you were all right and you did give me a copy there is no question about that.

Q I had two copies—Mr. Geoghegan gave me two copies—I told you that?

A I think so. You opened the safe and gave me a copy, yes sir. But I want you to understand, Mr.

Stevens, I am not accusing you, and never did accuse you.

Q You don't think I have it now?

A No, I never thought so—I never mistrusted you one minute about that at any time, and don't now—never did.

Q You are satisfied right now that I never had that copy—never went 'south' with it?

A I absolutely think and so stated to Mr. Campbell—there was no doubt in my mind—no occasion to take the original because we had copies, even if you wanted to—I knew you well enough to know you would not pilfer a paper, and never thought so for one minute. But I did ask you, Mr. Stevens, if you had it, because Dick Geoghegan told me he gave it to you.

Q You mean the original notice?

A The original. I was satisfied he was mistaken, and he figured out I was mistaken. Let me ask you a question. Did he ask you if he gave you that?

Q No indeed.

A Because he stated positively the first time that he gave it to you—was sure.

Q After this occurred, I went down and asked Mr. Geoghegan about the matter and he said he had no individual definite recollection of giving it to you, but supposed of course he did. I says, "Are you sure you didn't give it to me?" and he says, "Of course, I didn't give it to you."

A I am telling you what he told me.

Q You don't pretend in this case before this jury that I ever had that original or held it out on you?

A I don't claim there was anything wrong about that notice—it appears it is lost, and according to Mr. Geoghegan, the chances are I lost it.

Q You have known me a good many years?

A I don't think you would do anything like that—I don't think so for one minute.

MR. STEVENS: That is all.

GEORGE MOODY, called as witness for defendants, being duly sworn, testified:

Direct Examination

BY MR. ROTH:

Q Mr. Moody, during the months of June and July of last year, what business were you engaged in?

A I was in the transportation business.

Q Were you carrying mail?

A Yes sir.

Q From where to where?

A From Nenana to Eureka Creek postoffice, Kantishna.

Q At what time did you first land at Roosevelt, that is, the first trip that year?

A Well, I couldn't tell you off-hand.

Q Have you the data with you?

A No sir, I haven't; in fact, I haven't any of that data as I destroyed it in the fall of the year after I was through with the work.

Q Do you know what time you arrived at Eureka postoffice on your first trip?

A That was in the latter part of June—I couldn't say the day.

Q Who were with you—in the latter part of June, you say?

A Yes sir. My mail contract called for delivery of mail any time in June—any time in the month—there was no special date of leaving—think it was the latter part of June because it was late that trip.

Q Can't you come nearer—give me the nearest you can come to the date when you delivered mail there.

A Well, that might have been the 1st or 2nd of July.

Q You say the 1st or 2nd of July?

A Yes sir.

Q Who were with you as passengers on that trip up the Kantishna River, if any one?

A Mr. Ellis and his son, Mace Farrar, George Harrington—

Q Was Dr. Laymon?

A Yes, Doc Laymon.

Q Do you know a man by the name of John Biglow?

A Yes sir.

Q Was he with you on that trip?

A No, I think not.

Q Did you see him after you got into Eureka on that trip?

A No, not to my knowledge. He may have been with me on that trip—Biglow made one trip with me I think, but what trip that was, I didn't keep any track of it.

Q Did you see George Black on that trip? Did you meet his boat?

A I might have.

Q Do you remember whether or not you met his boat a short time before you got to Roosevelt?

A I did on one occasion—I don't know whether that was the first trip or not—it might have been that trip.

Q Would you say that it was not before the 1st of July that you got into Eureka?

A Well, it might have been, Mr. Roth—the only way I can place it, is that I have a recollection of having spent the 4th of July at Roosevelt, and counting back the time it would take to come from Eureka to Roosevelt, and having stayed over there twenty-four hours which my contract called for—must lay over twenty-four hours—it makes it about that time.

Q You spent the 4th of July at Roosevelt?

A To the best of my recollection.

MR. ROTH: You may cross examine.

Cross Examination

BY MR. STEVENS:

Q And that was after you returned from Eureka Creek?

A Yes sir.

Q It is a distance of something like thirty miles from Eureka to Roosevelt?

A It is thirty or thirty-five miles—some call it thirty and some thirty-five.

Q You generally take two days?

A Two days, or two and a half—it depends on the trail.

Q Well then, if you spent the 4th of July at

Roosevelt, you must have been at Eureka Creek the 30th of June, if you count two or two and a half days back—or the 1st of July at any rate.

A We might have been there at that time—I can't state definitely because the days and nights are the same at that time of the year and we traveled part of the time at night.

Q When you went back from that first trip, did Mr. William Grant go with you?

A Yes sir.

Q When you started out from Roosevelt—I mean when you started out at Eureka to go back with the mail to Roosevelt, state what obstruction, if any, you found across the road near Eureka where you started.

(Mr. Roth enters objection to the question as immaterial. Objection over-ruled.)

A Why, I think the only obstruction to the road was a tree cut down across the road down around Friday Creek.

Q Was it on your regularly traveled road?

A Yes, right on the wagon road.

Q Going back to Roosevelt that was?

A That was going from Eureka back towards Roosevelt.

Q And what was on that tree in the way of writing or notices?

A There was a notice—think it was a notice of Grant's—in fact, I know it was a notice of Grant's because I read it when he took it off the tree.

Q Grant was with you?

A Yes.

Q You saw Grant's name on it?

A Yes sir.

Q It had been nailed or tacked up on the fallen tree?

A Yes sir.

Q What did you do—remove the tree?

A I took the notice off—if I remember right, I took it off myself and handed it to Mr. Grant and then moved the tree and got in the wagon and went on.

Q How big was the tree?

A Probably three or four inches in diameter.

Q It had to be removed before you could proceed along the road?

A Yes sir.

Q Then Grant arrived the 4th of July?

A Mr. Grant—we traveled together—Mr. Grant was hauling the mail back.

Q With his team?

A Yes.

Q And was Grant with you—was he in Roosevelt on the 4th of July, 1921?

A Yes, he was if I was.

Q You traveled together until you got to the Landing?

A Yes.

Q Roosevelt is referred to in that country as "The Landing?"

A It is the landing—roads run from there to the creek.

Q It is known as the head of navigation?

A It is the nearest point—that is, where a wagon road goes into the mines.

MR. STEVENS: That is all.

Re-Direct Examination

BY MR. ROTH:

Q Where did you—did you see where the tree had been cut?

A The tree was just slashed—if my memory serves me right.

Q It wasn't cut clear off?

A I hardly think so—if it was, it was laying up on the stump where it was cut.

Q That was some distance from Quigley's tunnel, wasn't it?

A I don't know where Quigley's tunnel is—I have never been there.

Q How did you come down from Eureka?

A From the postoffice?

Q Yes. Did you come right down Moose Creek?

A Yes.

Q You didn't cross over where Quigley lives—over near where Quigley lives?

A We took the mine road across.

Q Don't you know where Quigley lives up on the hill?

A Well, I would know the place if I see it—it was pointed out.

Q How far away were you from that on this trip?

A I was in the creek at the foot of the hill.

Q That is where that tree was?

A No, that tree was farther down where they tell

me the mouth of Friday Creek is.

Q Still farther down yet?

A I believe so.

Q About how far from Eureka Creek postoffice?

A I can't say—it was the only trip I made over there.

Q What was done with that notice that you took off that tree?

A It was put under the seat in the buckboard.

MR. ROTH: That is all.

MR. STEVENS: That is all.

WILLIAM J. CAMPBELL, one of the defendants, recalled as witness in his own behalf, being heretofore sworn, testified:

Direct Examination

BY MR. ROTH:

Q Mr. Campbell, the notice of location that was delivered up on the day that your deposition was taken—was that the original notice of location that was signed by yourself and Mr. Tobin?

A Yes sir.

Q Is that the one that was recorded in the office of the Recorder of the Kantishna Precinct?

A Yes sir.

MR. ROTH: That is all.

Cross Examination

BY MR. STEVENS:

Q That notice of location that Mr. Roth has just asked you about—was it signed by you, William J. Campbell?

A Yes sir, I think it was.

Q And was it signed by the defendant, Tobin?

A Well, Tobin wrote the notice and I think he signed, but I wouldn't say for sure.

Q You wouldn't say whether he signed?

A Tobin wrote it out, but I don't know whether he signed it or I did.

Q Was it written out on a printed blank form?

A Yes sir—one of the printed blanks we got from the Recorder.

Q You got it from the Recorder's office up at Eureka Creek?

A Yes sir.

Q And Mr. Tobin, in his own hand-writing wrote—that is, filled in the blank?

A Yes sir, he filled it in.

Q Did he do it with pen and ink or lead pencil?

A I don't remember—I think it was lead pencil.

Q You think it was lead pencil on a blank form. Did you have it recorded or did someone else?

A Mr. Tobin recorded it—I was there when he recorded it. It was one evening we went up there—I don't remember when it was.

Q Who got it out of the Recorder's office—you or Tobin?

A I got it out I think—am not sure.

MR. STEVENS: That is all.

MR. ROTH: That is all.

(Recess of Fifteen minutes until 3:05 P. M.)

MR. ROTH: The defendants rest.

WILLIAM F. TENEYCH, recalled as witness for

plaintiff, in rebuttal, being heretofore sworn, testified:

Direct Examination

BY MR. STEVENS:

Q Mr. TenEych, do you know Mr. Quigley—J. B. Quigley?

A Yes sir.

Q Do you know about the time that Campbell and Tobin went on this ground in dispute and sunk a hole, or started a hole?

A Near the time, yes.

Q I will ask you to state whether or not, somewhere about two weeks prior to the time when defendants went on the ground, that you had a conversation with Mr. Quigley, about the vicinity of the ground, you and Quigley being present, and also your partner—a man by the name of Connolly—wherein Mr. Quigley said to you, or one of you in substance: “Why don’t you fellows stake that ground?” (referring to the ground that Campbell and Tobin afterwards located) Quigley saying further that, “You fellows might just as well stake that as any one.”

(Mr. Roth enters objection to the question as being irrelevant, incompetent and immaterial, the same question not being propounded to Mr. Quigley, no place stated where conversation took place, and not a conversation about which Mr. Quigley was asked—it was not stated whether or not Mr. Quigley made the statement to Mr. TenEych, the witness here, or to his partner—and not being the same question

asked Mr. Quigley. Objection over-ruled. Exception taken and allowed)

Q You may answer the question.

A Yes, a conversation of that kind took place.

Q Mr. TenEych, did you sometime in the summer or fall of 1921, either yourself or in connection with any one else, stake or locate a ledge—a lode mining claim across Moose Creek from this property in dispute, something over 3,000 ft. distant from the mouth of Quigley's tunnel?

A We had a deal with Mr. Hamilton—he staked the ground, we doing the work for an interest.

Q Did you run a tunnel of some kind?

A Yes sir, we started a tunnel.

Q What did you find there in the way of rock?

A We were not in far enough to determine whether in rock or not—had decomposed ledge matter there.

Q Decomposed ledge matter?

A Yes sir.

Q Did you find either wall?

A No sir.

Q You haven't found any wall?

A No sir.

Q What is the color of it generally?

A It is a kind of black 'talcy' looking substance.

Q Have you examined any of the vein in the Quigley lode?

A I have seen the vein—seen the lode—but I am not experienced enough in quartz mining to know whether—(interrupted)

Q State whether or not what you found in your

tunnel there across the creek—how does that compare with what you saw in Quigley's lode?

A I don't know whether it would be the same or not.

Q Does it look like the same to you?

A No sir, it does not, but it is decomposed so I don't know what it is.

Q It might be the same vein or it might not?

A It might or it might not.

Q Where you have made your location you spoke of—are there any other locations in that vicinity on that side of the creek on that hill?

A Above us, I believe Mr. Quigley has a location.

Q How far above you?

A It would be probably 2,000 feet—maybe a little more.

Q Have you examined Quigley's property?

A I have not.

Q You don't know what that is?

A No sir.

MR. STEVENS: That is all.

Cross Examination

BY MR. ROTH:

Q You and Mr. Quigley were friendly at that time?

A We have been on friendly terms, yes sir.

MR. STEVENS: Which time?

MR. ROTH: The time he testified to.

Q At the time you had this talk with Mr. Quigley there, you and he were friendly?

A Yes sir.

Q Have you been ever since?

A Yes.

Q And are now?

A Yes sir.

Q I gather from what you have to say, that Mr. Quigley gave you to understand that somebody was liable to take that ground and you might as well take it as anybody?

A Yes sir.

Q He considered it open for somebody to take?

A Yes sir.

MR. ROTH: That is all.

MR. STEVENS: That is all.

O. M. GRANT recalled as witness for plaintiff, in rebuttal, being heretofore sworn testified:

Direct Examination

BY MR. STEVENS:

Q Mr. Grant, Mr. O. M. Grant, you have testified heretofore in this case and have been sworn, have you not?

A Yes sir.

Q Do you know Mr. Dalton?

A Joe Dalton—yes sir.

Q You may state whether or not about the 2nd day of June 1921, at Eureka—at the mouth of Eureka—at Mr. Joe Dalton's garden, on or near the bank of Moose Creek, in the Kantishna Precinct, Alaska, you and Mr. Joe Dalton being present, that Mr. Dalton said to you in substance, that Campbell and Tobin (referring to these defendants) were setting big chunks of high-grade in one of your holes (referring

to the assessment holes that you sank in William Grant's Hillside Bench Placer Claim)—that they were getting big chunks of high-grade in one of your holes four feet deeper than you went, and that you said to Dalton in substance, "What do they (referring to defendants) want to go in my hole for?" to which Mr. Dalton responded in substance, "They did start a hole of their own this way (indicating up stream—up Moose Creek) from your hole, but the surface water was bothering them and they could not get down without timbering and they wanted to get down and locate the lode before Billy Grant got back from the Landing (referring to Roosevelt)—state whether or not you and Dalton had that conversation at that time and place in substance.

A Yes sir.

Q On or about the 9th or 10th day of November, 1920, at the cabin of Mr. Joe Dalton, during the time that you were doing assessment work on plaintiff's placer claim—did you have a conversation with Mr. Joe Dalton—no one else being present, in substance as follows—that Dalton asked you why you did not bottom one of your holes—one of the holes you put down on the bench—and pick up the Quigley lode, and that you said in substance that you suggested that to Billy Grant, the plaintiff, to put on a windlass, and that you could get your partner. Mr. Childs, or some name like that, to help you and that you could pick up that lode, and that you also then and there told Joe Dalton that Billy Grant responded to you—to your suggestion—"To hell with it, you might have to go 100 feet" and that he was not holding it for

mining purposes but was holding it for Tom Aitken for warehouse purposes.

Mr. Roth enters objection, claiming that witness has already answered that identical question, having answered "No". Objection over-ruled and Court states that question may be asked again and witness may answer. Exception taken and allowed.)

Q Do you understand the question ?

A Yes sir.

Q You may state whether or not at that time and place you and Dalton had in substance that conversation.

A No sir.

MR. STEVENS: You may take the witness.

Cross Examination

BY MR. ROTH:

Q You answered that question before, didn't you?

A Yes sir.

Q That was the same question he asked you when you were on the stand before?

A About the same, I think.

Q And you answered "No" then? How do you know it was on the 2nd day of June that you had this conversation that you testified to now with Joe Dalton at or about his garden?

A I always marked it down when I planted my garden.

Q You were planting garden then?

A I was making garden ready.

Q Where were you making it ready?

A About 100 ft. from Joe Dalton's garden.

Q Then you know from that that it was on the 2nd day of June?

A I kept track of it.

Q Have you that record with you?

A No sir.

Q How many days were you working in your garden?

A I guess off and on—not all day—think I was making garden on the 1st and 2nd and on the evening of the 2nd I planted some of the spuds and on the evening of the 3rd I finished them.

Q So it was either the 1st, 2nd or 3rd?

A It was the 2nd, I tell you.

Q That was the day?

A Yes, that was the day.

Q Didn't you know they had already bed-rocked their hole?

A No sir.

Q You didn't know it?

A I didn't know it.

Q If you talked to Joe Quigley on the 2nd day of June, didn't Joe Quigley tell you they had bed-rocked the day—(interrupted)

A I didn't see Joe Quigley on the 2nd day of June.

Q I mean Joe Dalton—didn't Joe Dalton tell you when you talked to him that they had—Campbell and Tobin had bed-rocked their hole?

A No sir.

Q Do you know what work Joe Dalton was doing at the time you had this talk?

A I do—he was making an addition to his garden—making it a little wider—takng the sod off.

Q Did you know about Joe Dalton working on quartz on the other side of Moose Creek about that time?

A No sir.

Q Did you know about him working on quartz a short time before that?

A I didn't know he was working on quartz at all—he was a placer miner—I didn't know he did quartz work at all.

Q You never heard about Joe Dalton working on a quartz claim up on the other side of Jack Hamilton's claim on the opposite side of Moose Creek-

A No sir.

Q You never heard about it until the trial of this case?

A No sir.

Q Did you know about Joe Dalton having a claim adjoining the Red Top on the other end—the up hill end from this Silver King Lode?

A I know his claim is up there somewhere, but didn't know where the line was.

Q Didn't you know he was working up there all the time from the 20th day of May until after the 2nd day of June?

A No sir, I didn't know where he was—had no knowledge.

Q You testified when on the stand before that you were at the discovery shaft of Campbell and Tobin some time in June, did you not?

A Yes sir.

Q What time in June?

A On the 3rd day of June.

Q Now was it before or after that that you had this talk with Joe Dalton?

A It was the next day after I talked with Dalton.

Q At that time you knew they were to bed-rock?

A Yes sir, there was rock there from bed-rock on the dump when I got there.

Q That is the day you saw the fresh hole right close to that shaft?

A Yes sir, that same day.

MR. ROTH: That is all.

MR. STEVENS: No further examination.

ROGER PARENTEAU, recalled as witness for plaintiff, in rebuttal, being heretofore sworn, testified:

Direct Examination

BY MR. STEVENS:

Q You are the same man that testified heretofore in this case?

A Yes sir.

Q I believe you testified something about the controversy that you witnessed—the portion of which you witnessed—between the defendant, Campbell, and Mr. William Grant on July 25, 1921?

A Yes.

Q That was in the morning about eight o'clock?

A Yes.

Q Did you see Mr. Campbell throwing stones at this box that contained the trespass notice of William Grant's?

(Mr. Roth enters objection to the question in rebuttal, and concedes he did so testify.)

Q Did you see Mr. Campbell—Did you see Mr. William Grant go up to somewheres near the box and notice and sit down on the ground so the box and notice would be in line between Campbell and Grant?

A No.

Q You didn't see that? Did you see Campbell go to one side so as to be out of line with Grant?

A He went out on the dump a ways, but I don't know whether he called it being out of line.

Q What did he do out on the dump?

A When I come out to help Mr. Grant out, he started towards us a ways and threw another rock.

(Mr. Roth moves to strike out answer as the matter has already been gone over in previous testimony—not rebuttal. Objection over-ruled.)

Q How near did the rock come to the box?

(Mr. Roth enters objection as irrelevant and immaterial—not rebuttal—witness testified on the matter before. Objection over-ruled.)

Q Did that rock you saw Campbell throw come to the box?

A It must have been four or five feet from it—something like that.

Q Did it go over the top of the box?

A Yes, and a little to one side.

Q How close did it come to hitting you?

A Within two or three feet of my head.

Q And how close to hitting Grant?

A About the same.

Q Two or three feet. Do you know about how big the rock was?

(Mr. Roth objects as already being testified to.

Objection sustained.)

Q Now, if I remember your testimony, you only saw Campbell throw one rock?

A Yes.

Q And afterwards you helped Grant up from the ground?

A Yes.

Q Was Grant at the time you helped him up between Campbell and the box?

A To one side of it.

Q Which was nearer to Campbell—the box or Grant?

A They would be about the same distance.

Q And how far was Grant from the box to one side?

A Two or three feet—four feet—something like that.

Q Did you wave over to Campbell to come over where you were?

A I believe I kind of shook my fist at him.

Q You didn't wave at him?

A What would I want to wave at him for?—would sooner wave at a snake.

Q Campbell testified that you waved for him to come over where you were—you and Grant—as I understand you, you did not do that?

A No.

MR. STEVENS: You may take the witness.

Cross Examination

BY MR. ROTH:

Q How did you shake your fist?—like that? (indicating)

A Yes sir.

Q And after you did that, Grant started over to you—I mean Campbell started over towards you?

A Yes.

Q Weren't you looking for trouble that morning?

A I was not.

Q Didn't you load that gun?

A I did not.

Q Didn't you so state over there at the little farcical trial they had?

A I did not.

Q Did you have anything to do with that gun before Grant took it and went out with it?

(Mr. Stevens enters objection as not proper cross-examination. Objection over-ruled. Exception taken and allowed.)

A No, I did not.

Q Where was that gun?

A When we went to eat breakfast it was under the mattress of Grant's bed—rolled the mattress back to make a seat to sit at the table and that was the first I saw of the gun.

Q What did you do with the gun?

A Who?

Q You.

A I didn't put my hand on it at all.

MR. ROTH: That is all.

MR. STEVENS: That is all.

ALOIS FRIEDRICH, recalled as witness by plaintiff, in rebuttal, being heretofore sworn, testified:

Direct Examination

BY MR. STEVENS:

Q You are the same Mr. Friedrich that testified heretofore in this case?

A Yes sir.

Q Mr. Friedrich, you have indicated on map marked "Plaintiff's Exhibit A" at the lower end line of the Red Top Lode Claim of Quigley's—from the lower corner stakes of Quigley's there are two red lines running up hill in a northeasterly direction, crossing the lines of the Hillside Bench Claim as originally—well, crossing the upper side line of the Hillside Bench between—on the line between the corner that is designated on the map as corner No. 3 post and corner No. 4 post. Have you calculated the area of that section—the area of that part of Quigley's Red Top Lode?

A I have.

Q And what is the area?

(Mr. Roth enters objection as being irrelevant, incompetent and immaterial. Objection over-ruled. Exception taken and allowed.)

A 3.7 acres.

Q Have you calculated that part of the lower end of Quigley's location between Quigley's lower end line, as indicated on this map, and the ground where the line between post—corner post No. 3 and corner No. 5—is located?

A I have.

Q Where that line cuts or intersects Quigley's side line?

A I have.

Q What is that area?

(Mr. Roth enters objection as being irrelevant, incompetent and immaterial. Objection over-ruled. Exception taken and allowed.)

Q What is that?

A 2.3 acres.

MR. STEVENS: You may cross examine.

MR. ROTH: No questions.

(Recess of ten minutes at request of counsel until 4:20 P. M.)

JOHN BUSIA, recalled as witness by plaintiff, in rebuttal, being heretofore sworn, testified:

Direct Examination

BY MR. STEVENS:

Q Your name is John Busia?

A Yes.

Q You are the same man who testified heretofore?

A Yes.

Q I will ask you to state whether or not about February 1st, 1921, at Tom Aitken's bunkhouse in the evening after supper, when William Grant was present, O. M. Grant, John Busia, and others of the crew of Tom Aitken being present, did the following conversation take place—and Mr. Campbell also being present—the defendant—where in Campbell said that Quigley had started his new tunnel, and William Grant then asked Campbell where he (Quigley) had

started it, and Campbell said about forty or fifty feet below the blacksmith shop, and William Grant said that Quigley was way down over his line, and Campbell said, "No, his stake is down another 100 feet" and William Campbell said "No" and—I mean William Grant said "No", and he also then said to O. M. Grant that Quigley must be down with his blacksmith shop over 100 feet below Grant's line, and O. M. Grant said that the stake he put up is in the draw and you can't see it from the corner, but the shop must be something like that, and Campbell said that Quigley's lower center stake was just above where O. M. Grant was working, and William Grant then said that he did not care where his lower stake is—that he knew where his line is, and William Grant also said that Quigley could just as well have turned in that dead work for assessment work on the placer and saved Aitken \$100.00, and William Grant said that it was more for Quigley's benefit to hold the Hill Bench for a mill site than it was for Aitken's benefit. Did you or did you not, hear a conversation at that time and place in substance as I have stated and is contained in this question?

A I heard him—Mr. Campbell came up one day and said Quigley had started some hole, but I don't know whether Tom Aitken was there in the house—(interrupted)

Q This conversation I have been asking about was a conversation that Mr. Campbell testified took place on or about the 1st of February, 1921, at Aitken's bunkhouse in the evening after supper, William Grant, O. M. Grant, and you, and other members of

Aitken's crew being present, and also Campbell—it doesn't say Aitken was present—but at this time and place, did you hear a conversation like that?

A No, not at all.

MR. STEVENS: That is all.

Cross Examination

BY MR. ROTH:

Q You did hear a conversation there though?

A I just heard when Campbell was talking to William Grant that Quigley started a hole and Grant wanted to know the place he sank—but I don't remember—was on the other side of bunkhouse and don't understand—

Q You didn't pay much attention?

A No.

Q You don't know really what was said?

A Know they was talking about sinking a hole—Quigley was sinking a hole—but I don't know.

Q Did Billy Grant kick about it at the time?

A He never kicked—looked to me kind of sore, but never kicked.

Q You were talking with somebody else at the time, and didn't pay much attention to this conversation?

A No.

Q Who was paying attention?

A I don't know.

Q Did you hear Billy Grant say in that conversation anything at all about Quigley working on that ground?

A He never tell me.

Q Did you hear him say anything to Campbell or anybody there at that time?

A I don't remember.

MR. ROTH: That is all.

MR. STEVENS: That is all.

WILLIAM GRANT, plaintiff, recalled as witness in his own behalf, in rebuttal, being heretofore sworn, testified:

Direct Examination

BY MR. STEVENS:

Q Mr. Grant, I will ask you whether or not, about February 1st, 1921, at Aitken's bunkhouse in the evening after supper, you being present, and O. M. Grant and John Busia and others of the crew of Tom Aitken being present, the following conversation took place in substance: that Campbell said that Quigley had started his new tunnel and you asked Campbell where he had started it, and Campbell said about forty or fifty feet below the blacksmith shop, and you (William Grant) said that Quigley was away down over your line, and Campbell said "No", his stake is down another 100 feet or more, and you said, "No" and then said to O. M. Grant that Quigley must be down with his blacksmith shop over 100 feet below your line, and O. M. Grant said that the stake he put up is in the draw and you can't see it from the other corner, but that the shop must be something like that, and Campbell said that Quigley's lower center stake was just above where O. M. Grant was working and you then said "I don't care where his lower stake is, I know where my line is" and you also said that

Quigley could just as well have turned in the dead work for assessment work on the placer and saved Aitken \$100.00, and you said that it was more for Quigley's benefit to hold the Hill Bench for a mill site than it was for Aitken's benefit?

(Mr. Roth enters objection on the ground of being immaterial and same question already answered by witness when on the stand before. Objection overruled.)

Q You may state whether or not at that time and place substantially that conversation occurred.

(Mr. Roth again objects to question as having been put to this witness before. Court rules that if there is any doubt, witness may answer again. Exception taken and allowed.)

Q State whether or not that conversation in substance occurred at the time and place indicated by the question.

A No sir, not to my knowledge—no such conversation or anything like it.

Q It never occurred?

A No sir.

Q Did you on the morning of the 25th of July, 1921, after nailing up the box on the stake which contained trespass notice that you put there on your placer claim, as you have heretofore testified—did you see Mr. Campbell throwing small stones or pebbles at that box and that you thereupon went over there, sitting down on the ground so the box—so you would be in line with Campbell and the box—so the box would be between you and Campbell?

(Mr. Roth enters objection as immaterial irrel-

evant and incompetent. Objection over-ruled.)

Q Did that occur?

A No sir.

Q When Mr. Campbell brought back the cayoses, or horses, to Roosevelt, about the 10th or 11th of May—whenever it was—after having borrowed them, did you say to Mr. Campbell that you never saw those horses in better condition?

A No sir.

Q You didn't say that?

A No sir.

Q Did you ever state to Campbell, the defendant, that if Quigley would turn in the work he did as assessment work for your placer claim, it would save Aitken \$100.00?

A No sir.

Q At Roosevelt did you have a conversation with the defendant Campbell along in the fore part of May 1921 wherein you asked Mr. Campbell what Quigley was doing and Campbell told you something about what he was doing and you said that Quigley ought to let Aitken take out what he had found there? Did you say that?

A No sir.

Q When Mr. Campbell brought the horses back to Roosevelt, after having borrowed them about June 16, 1921—(question withdrawn)—When Mr. Tobin went to Roosevelt, did he and you have a conversation about June 16, 1921, in the presence of 'Cow' Miller, or any other person, where you asked—stated or told him you heard that he—you understood that he, or he and Campbell had struck it rich, and that you un-

derstood that they had sunk in one of your holes, and that Tobin said "No, not in your hole"? Did such a conversation occur between you and Tobin?

A Not in them words—no.

Q In substance, was there such a conversation at Roosevelt on June 16, 1921?

A Yes sir.

Q There was a conversation?

A He wanted to know if I wanted to sell the horses and I told him "No."

Q He wanted to buy the horses? and you told him "No"?

A Yes.

Q Was that all there was to it?

A Yes.

Q You didn't say anything about him striking it rich in your hole?

A No sir.

Q Never mentioned it at all?

A No sir.

Q About July 3, 1921, down on the lower end of where the Silver King Lode Claim has been located, did you tell Tobin to keep off your Hillside Bench Claim and you and Tobin had a few words?

A I told him—but not that day.

Q What date did you tell him?

A A few days before that.

Q About how many?

A Two or three days before that.

Q Along about the first of July?

A About the first of July.

Q Did you have a conversation with Mr. Quigley,

Joseph Quigley, where 'Big Sandy' Burr was present, in August or September, 1920, while Quigley was working on his Red Top Lode Claim—did you ask Quigley something about the—his work there—and that Quigley said he dug up a nice prospect, and he said in substance he wanted a building site, and you said to Quigley that he could have it if he would turn in the work he had done as assessment work on your placer claim—or words to that effect?

(Mr. Roth enters objection as same question was answered by this witness before. Court rules that on account of so many conversations being testified to it is difficult to remember who has been questioned with reference to them, and instructs witness to answer..)

Q Was that conversation had in substance in August or September, 1920, between you and Quigley?

A No sir.

Q You may state whether or not, some time before O. M. Grant did the assessment work on your Hillside Bench Claim— whether or not you had a conversation with Mr. Quigley where Quigley said to you that if you would give him a bill of sale to this ground, the Hillside Placer Bench, that he would keep up the assessment work, and that you said that you could not do it as you had located it for Aitken and that he (Quigley) would have to see Aitken about it? Did you and Quigley have a conversation like that where you said in substance what I have asked you?

(Mr. Roth enters objection, the same question

having been asked of this witness before. Objection over-ruled.)

A Part of the question "Yes", and part "No".

Q Did Quigley ask you for a bill of sale of the property?

A Yes sir.

Q And what did you say?

A I told him, No, I wouldn't do that.

Q Did you tell Quigley in substance that you had located the ground for Aitken and he would have to see Aitken?

A No sir.

Q Did you ever tell Quigley that?

A No sir.

Q Did you ever tell anybody that?

A I never told nobody.

Q Did you have a conversation with Mr. Quigley about August or September, 1921, wherein Mr. Quigley asked you for—wanted to get you to give him rights to dump on your claim, and you stated to him you could not do so until you had seen Mr. Stevens? Did that conversation occur?

A Yes sir.

Q Was it just that way or how was it?

A The conversation wasn't in them words.

Q State as near as you can what the conversation was.

A I said I couldn't do it—had a partner in it.

Q Was that before or after this suit was brought?

A After the suit was brought.

Q Did you mention my name?

A I don't think I mentioned it at all, but wouldn't swear to it.

Q Did you have a partner at that time?

A Only the arrangements made with my attorney

Q You had me in mind when you said you would have to see your partner?

A Yes.

Q As a matter of fact, you and I were not partners at that time?

A That is the way I put it.

Q We were not partners at that time?

A In one sense of the word, but not partners—but we had an agreement at that time.

Q The only relation we had at that time was the relation of attorney and client?

A Yes sir.

Q And isn't it true, as compensation for my services in this case you have agreed to give me an interest in this ground if I win it, and if I don't win it, of course, I won't get any pay?

A That is it.

Q And you are to pay the costs of court, isn't that true?

A Yes sir.

Q And it was that relation you had in mind when you had me in mind as partner—isn't that true?

A Yes sir.

Q It is in the evidence here that you located this placer claim and also the quartz claim in your name. Have you ever made a deed or transfer to any one of this placer claim, or any interest in it?

A No sir.

Q Have you made a deed or any conveyance of your Hillside Quartz Lode Claim that you located there to any one?

A No sir.

Q Have you ever made any papers or given any rights there, except other than what you have testified to that you gave your attorney Stevens—have you ever made any disposition of any part of either of those claims, excepting as you have indicated in your testimony?

A No sir.

Q That is all now, Mr. Grant. Is there anything else now that you think of at this time that I ought to ask you about that I haven't?

A No sir.

MR. STEVENS: You may take the witness.

Cross Examination

BY MR. ROTH:

Q You say you told Mr. Tobin about the 1st of July to keep off that ground?

A Something about that time, yes.

Q About the 1st of July you told Mr. Stevens?

A Yes sir.

Q How long did it take you to go from Eureka Creek postoffice to Roosevelt on that particular trip that you were with Moody—the first trip Moody was there?

A I believe I was in Roosevelt the night of the 3rd. That is always a five days trip and sometimes longer.

Q How long did it take you to go from Eureka

to Roosevelt?

A On that particular trip?

Q Yes.

A I don't exactly remember.

Q Did you make it in one day?

A No.

Q Where did you stay the first night?

A Stayed at Bear Creek.

Q Did you make it into Roosevelt the next day?

A Yes sir.

Q What time of day of the second day did you get to Roosevelt?

(Mr. Stevens objects to question as not proper cross examination. Objection over-ruled.)

Q Where were you on the 4th day of July?

A I believe at Roosevelt.

Q How long on that trip just before did you stay in Eureka—I mean at Eureka?

A On that trip?

Q Yes.

A I don't remember—I don't know what trip you mean—I am mixed up.

Q Mr. Moody only went in one time?

A That is all.

Q I want to fix this time as nearly as I can—Mr. Moody went with you only one trip to Eureka—that is the time I am talking about—don't get mixed up on the trip—the one in which Mr. Moody went with you from Eureka and returned to Roosevelt—you won't get mixed up on which trip, will you?

A Not when you say on that one.

Q On that trip when you started with Mr. Moody

—how long did it take you to go from Roosevelt to Eureka?

A I don't remember—we stopped twice—at Bartlett's camp and Bear.

Q How long did it take to make the trip in?

A I don't remember.

Q And you don't remember how long you stayed at Eureka?

A With the mail?

Q Yes.

A Stayed twenty-four hours with the mail.

Q And then after twenty-four hours you went back with the mail?

A Yes.

Q And you were parts of two days going back?

A Over two days going back—can't make it in two days—it takes five or six days to make the round trip and sometimes it takes ten.

Q On that trip going from Roosevelt with Mr. Moody is the time you had quite a lot of passengers?

A No, I had Mr. Moody, Mr. Felix and another man.

Q No, I am talking about going from Roosevelt to Eureka.

A Yes, I had a lot of passengers then.

Q Who were the passengers?

A I don't remember—I really didn't have any passengers, they come along with me—I didn't charge them.

Q Who come with you that time?

A I don't remember on that time who came with me that time.

Q Do you remember when George Black came up to Roosevelt?

A No, I don't.

Q You don't remember when he got there with the steamboat?

A No sir.

Q When John Biglow went in there from Roosevelt, he went with you didn't he?

A I think so, but I wouldn't swear to that.

Q You did swear before.

A If I did, then I thought I knew he went in with me.

Q You introduced him to Joe Dalton, didn't you?

A Yes sir.

Q The time you introduced him to Joe Dalton, he went in with you?

A He must have.

Q Then he did go in with you? At the time he went in with you, isn't it true that nobody else went in with you except John Biglow and the driver—Clark?

A I don't know if it was that trip or not.

Q You testified before it was that trip, didn't you?

A I didn't testify that Clark was driver, did I? I never come out with Clark driving—drove the cay-oooses myself.

Q When you brought John Biglow up to Quigley's you left the wagon in the road and walked up to Quigley's place, isn't that true?

A It may be true.

Q It had to be true.

A It didn't have to be true.

Q Why not? You didn't drive up when you introduced John Biglow to Joe Dalton—you didn't have the wagon along with you then, did you?

A No—not up the hill—what date was it?

Q That is what I am trying to get at—that is the very thing I am trying to get at.

A You are trying to mix me up—if you are right, I made two trips in succession and partly covered the same ground in two different trips.

Q But you testified very positively you only made one trip and I am trying to show you that you made two trips—that the first trip you came over with Biglow—you and Biglow and Clark came over together and went right back and met Moody with the mail and came right back to Eureka, now isn't that true?

A I wouldn't swear it is true—I always thought Biglow came out with us that time we came out—
(interrupted)

Q Isn't that correct?

A I wouldn't swear it was correct—I don't know.

Q Would you swear it isn't correct?

A I would not—I can't do it either way—am not sure.

Q Isn't it true that you came up there at the time Biglow came, which was on the 23rd day of June—that you left Roosevelt immediately after George Black got in with the steamboat upon which John Biglow came to Roosevelt, and that you left immediately on the 21st of June and that you went right on and got in Eureka on the 22nd or 23rd of

June, and that you went right back and met Moody and got the mail and then come in and arrived in there about July 1st?

A That is utterly impossible—couldn't get over the road in less than three or four days.

Q I said the 23rd—21st, 22nd or 23rd—say it was the 23rd or 24th—I am not trying to show that you made a quick trip or slow trip, but am simply talking about the trip itself. Isn't it true that you made that trip in there and went back without putting up any notice of trespass, or without notifying either one of the defendants to get off this ground?

A They weren't on it—couldn't notify them to get off there when they weren't on it—that is, if I was there—I can't swear to that.

Q When Mr. Tobin was over to your place on the 16th day of June at Roosevelt where you were loading ore, the only thing talked about at all was he asked you if he could buy those horses and you told him "No"—that is all? There wasn't one word said at all about the claim or his work on that placer ground of yours?

A It was all at that time—it was only hearsay that they were on there—Jack Hamilton told me they were in my hole.

Q When he was there you didn't say one word to him about it?

MR STEVENS: This was 10 days after Campbell and Tobin's location had been made and couldn't have any effect whether he notified him or not.

A I notified them by registered letter first.

Q That was dated on the 3rd day of July, 1921?

A I don't know the date—don't remember.

Q It was on the trip that you were in there with Moody, wasn't it?

A That I registered the letter?

Q Yes.

A I posted the notices.

Q That is the time you gave them registered letter notice?

A No sir. The trip that I came in with Moody, Mr. Clark and I went up and posted notices—when I went over with the mail—I went back and started down and found this notice posted up on the road and then when I come back I notified them by registered letter.

Q It was later that you gave them notice by registered mail?

A Yes, after notice was torn down.

MR. ROTH: That is all.

Re-Direct Examination

BY MR. STEVENS:

Q Do you know the date you mailed registered letters to those men?

A No sir, I don't.

Q Have you copies of those letters?

A No sir.

Q I hand you a Post Office register return receipt (hands card to witness) —it seems to be stamped "Kantishna, July 23rd, 1921". Do you know whether that refers to the letter you spoke of?

A Yes sir.

Q It was addressed to whom?

A One to Mr. Campbell and one to Mr. Tobin.

Q Here is another one—same date (hands card to witness) does that also relate to the other letter you addressed to Mr. Tobin?

A Yes sir.

Q It bears date of July 23, 1921, does it?

A Yes sir.

Q Since referring to that, are you able to state whether or not you posted that letter at the post-office about the time stamp indicates—July 23, 1921?

A Yes, Mr. Wilson gave me these.

Q When you delivered him the letter?

A Yes sir.

MR. STEVENS: We offer these in evidence.

(Admitted and marked Plaintiff's Exhibits "H" and "I".)

MR. STEVENS: It is stipulated that these two exhibits are both dated July 23, 1921 by stamp and stamped "Kantishna, Alaska." The return receipt of one is signed by W. J. Campbell and the other signed J. L. Tobin, by W. J. Campbell. Do you stipulate you consider them read? (addressing Mr. Roth.)

(Mr. Roth so stipulates and it is agreed that it is not necessary to read them to the jury.)

MR. STEVENS: That is all.

MR. ROTH: That is all.

MR. STEVENS: Rebuttal closed.

WILLIAM J. CAMPBELL, one of the defendants, re-called as witness in his own behalf in sur-rebuttal, being heretofore sworn, testified:

Direct Examination

BY MR. ROTH:

Q At the time that Mr. William Grant and Mr. John Biglow came up there at the time that Mr. William Grant introduced John Biglow to Joseph Dalton, did you see the wagon that they came in?

A I saw the wagon going up Moose Creek, but I didn't see them get out.

Q Who was in the wagon?

A Joe Clark.

Q Any one else?

A Not at that time.

Q Do you know when Mace Farrar and Dr. Layman and those people mentioned came in with reference to the time John Biglow came in?

(Mr. Stevens enters objection on the ground of not being proper sur-rebuttal. Objection overruled)

A Yes sir.

Q When?

A About the 1st of July.

Q And when was this that John Biglow and William Grant came in?

A About the 23rd of June.

MR. ROTH: That is all.

MR. STEVENS: That is all.

(Both sides rest.)

Session 10:00 A. M. February 9, 1922.

MR. ROTH: If the Court please, defendants desire to renew their motion for non-suit upon all the grounds stated at the prior time of presenting the motion.

(Court denies motion. Exception taken and allowed)

TESTIMONY CLOSED

(Title of Court and Cause.)

Instructions to the jury

Gentlemen of the Jury:-

I.

You are instructed that the case now on trial before you is what is known as a civil case, and generally called an action in ejectment, for the recovery of possession of real property.

In this action the plaintiff claims that he is the owner and entitled to the possession of what is known as the Hillside Bench Placer Claim, by virtue of a location thereof, made by him in the month of April 1920, containing twenty (20) acres more or less, being opposite to, adjoining and lying east of the Horse-shoe Placer Mining Claim on the right limit of Moose Creek, being thirteen hundred and twenty (1320) feet in length, by six hundred and sixty (660) feet in width, in the Kantishna Mining and Recording District, Alaska.

He also claims that he is the owner and entitled to the possession of what is known as the Hillside Lode

Claim by virtue of a location thereof, made by him on the 25th day of July, 1921, the center upper end post of said Hillside Lode Claim being within the boundaries of the above described placer claim and situated about eighty (80) feet down hill and in a westerly direction from the mouth of what is known as the Quigley tunnel, said post being the discovery post on which the notice of location of said claim is posted; thence running in a westerly direction and down hill along the vein, through said Hill Bench and Horseshoe placer claims, a distance of fifteen hundred (1500) feet to the center lower end line of said quartz claim, the side lines of said Hillside Lode Claim running parallel to said lode and twenty five (25) feet on either side of the center of the vein, all in said Kantishna Mining and Recording District, Alaska.

While the title of the action attempts to designate four persons as defendants in the case, in reality, there are only two, namely: William J. Campbell and J. L. Tobin, and they, in answer to the contention of the plaintiff, deny his right and claim of title, and deny his claimed right of possession to either the aforesaid Hillside Placer Claim or to the aforesaid Hillside Lode Claim and to both of them, and for themselves claim and assert their title to and right of possession by virtue of a location thereof, made on the sixth day of June, 1921, of what is known as the Silver King Lode Mining Claim, situated on the right limit of Moose Creek and on the left limit of Friday Creek, in the Kantishna Mining and Recording District, Alaska, as the same is described in recorded notice thereof, in the records of said Record-

ing District, recorded in Volume 1 of "General" at Page 207 and numbered 3147.

The plaintiff in his reply filed in the pleadings denies the facts set up by the defendants in their further separate and affirmative defense, and denies their title and right of possession to the Silver King Mining Lode, but admits that the defendants were in possession of the same at the time of the commencement of this action.

I—a.

You are further instructed that while the plaintiff claims damages in the sum of \$500.00, no competent evidence has been placed before you upon the subject of damages, and you should eliminate and not consider the question of damages in your deliberations and verdict.

II.

You are instructed that in the trial of a civil action, the Jury and Judge of the Court have separate and distinct functions to perform. It is the duty of the Jury to hear all the evidence in the case, and to decide, subject to the instruction of the Court, all questions of fact arising therefrom. It is the duty of the Judge of the Court to decide all questions of law arising from the evidence, and to instruct you upon the law applicable to the facts and evidence in the case, and the law makes it your duty to accept as law what is laid down as such in these instructions.

III.

You are instructed that the issues of fact in this case as between plaintiff and defendant, that is to say,

what one alleges or affirms and the other denies, must be decided and determined by you, and be so determined by you according to the preponderance of the evidence in favor of the one or the other. By preponderance of the evidence is meant the greater weight of the evidence when considered in connection with all the facts in evidence in both sides, and the instructions of the Court as to the rules of evidence applicable to the facts in issue.

IV.

In this connection you are instructed you are the sole judges of all questions of fact and of the credibility of all witnesses appearing before you, and of the weight and effect of the testimony and evidence; but your power in this respect is not arbitrary, but is to be exercised by you in subordination to the rules of evidence laid down in these instructions.

V.

The burden of proof is upon the plaintiff as to all matters of fact claimed by him affirmatively, and equally so upon the defendants as to all matters of fact affirmatively claimed by them and as between the parties, plaintiff and defendants, if you should find the evidence evenly balanced, or if the weight of the evidence is on the side of the defendants, you should then find for the defendants; otherwise, you should find for the plaintiff, if the evidence preponderates in his favor.

VI

The weight of the evidence is not necessarily determined by the greater number of witnesses produc-

ed on one side or the other, and in considering the evidence, you are not bound to find a verdict in conformity with the declarations of testimony of any number of witnesses, when their evidence does not produce conviction in your mind, against a lesser number of witnesses or other evidence satisfying to your mind. Where the evidence is contradictory, the finding shall be according to the preponderance of evidence. Evidence is to be weighed and estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and the other to contradict, and therefore if the weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory was within the power of the party, the evidence offered should be viewed with distrust.

VII

In determining the credit you will give to a witness, and the weight and value you will attach to his testimony, you should take into account the conduct and appearance of the witness upon the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying, if any is shown; his relation to or feeling for or against any of the parties to the case; the probability or improbability of such witness' statements; the opportunity he had to observe and to be informed as to matters respecting which he gave testimony before you; and the inclination he evinced, in your judgment, to speak the truth, or otherwise, as to matters within the knowledge of such witness. It is your duty to give to the testimony of each and all

of the witnesses appearing before you, such credit as you consider the same justly entitled to receive.

VIII

If you find that any witness has wilfully testified falsely in one part of his testimony in this case, you may distrust any part, or all, of the testimony of such witness. And, if you believe from the evidence that any witness appearing before you in this case has wilfully testified falsely, you are at liberty to reject the entire testimony of such witness; but you are not bound to reject the entire testimony of a witness because he has testified falsely in some part of his testimony; you should reject the false part, and may give to the other parts such weight as you may deem they are justly entitled to receive.

You should not fail to weigh and consider fairly and give proper weight to all testimony that you consider truthful, and not false.

9

There is some evidence in this case as to oral admissions of some of the parties to this action, and oral statements of some of the witnesses in the case, to persons who have appeared before you as witnesses and testified to the same. I charge you that, owing to the infirmity of the human mind and the inability of witnesses to repeat the exact language used by persons alleged to have made such oral admissions, and to understand it correctly and repeat it with all of its intended meaning, you are to view the evidence as to such oral admissions and statements with caution. But if you shall find and believe that such oral ad-

missions were actually made by the person or persons alleged to have made them, you should consider them as candidly and fairly as other evidence in the case and give them weight accordingly.

10

You are instructed that a witness may be impeached either by proof of contradictory statements or statements materially different and at variance with what he may have testified to upon the witness stand. And, if you believe that any witness in this case has been successfully impeached, you may disregard the testimony of such witness unless his testimony is corroborated by other credible evidence in the case, and it is for you to say whether or not you will believe the witness sought to be impeached, or the witness brought to impeach him, as the law makes it incumbent upon the jury to determine the credibility of all the witnesses appearing and testifying before them in the trial of the case.

11.

You are also instructed that if you believe any witness has been successfully impeached or contradicted, in regard to any matter or thing material to the issues in this case, as defined in these instructions, you will be justified in disregarding the entire testimony of such witness, except in so far as his testimony may be corroborated by other credible evidence in the case, by facts and circumstances proven on the trial.

12.

You are instructed that the respective plats introduced in evidence in this case are not to be considered by you as evidence of themselves, but only to the extent that the posts, points, distances, buildings, corners, holes, lines, angles, and all printed or written matter of every description thereon, are sustained by a preponderance of all the evidence in said cause, and in so far as these things are not so sustained by the preponderance of the whole evidence, you should reject them. Their main purpose is to illustrate and explain the testimony of the various witnesses who testified concerning them, and to give to the jury a clearer understanding of the matters in controversy herein in making up your verdict, you should be governed solely by the evidence in the case as it comes from the lips of the witnesses.

13.

You are instructed that Section 2319 of Chapter 6, Title 32, Revised Statutes of the United States, provides as follows:-

“All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and that

Section 2322 provides as follows:-

“The locators of all mining locations on any min-

eral vein, lode, or ledge, situated on the public domain shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their location”

and that by Section 2329, it is provided that,

“Claims usually called placers, including all forms of deposits, excepting veins of quartz or other rock in place shall be subject to entry and patent under like circumstances and conditions and upon similar proceedings, as are provided for vein or lode claims”

14.

You are instructed that in order to make a valid location of a placer mining claim under the provisions of the statutes of the United States and Alaska, it is necessary that the locator shall be a citizen of the United States, or have declared his intention to be such, and

1st. That the ground be open unappropriated, public domain, or public mineral lands of the United States.

2nd. That a discovery of gold, or other precious metals, be made by the locator, on or in the ground, either upon or beneath the surface thereof, and within the boundaries of the placer location; that the discovery should be such as would justify a person of ordinary prudence, not necessarily a skilled miner, in the further expenditure of his time or means in an effort to develop a paying mine, taking into consideration the character of the ground sought to be located, its location and surroundings with reference to the existence of other mines or discoveries if any, in the same vicinity.

3rd. The placer ground sought to be located must be marked distinctly on the ground so that its boundaries can be readily traced. At each corner or angle of such claim a substantial stake, post or other monument shall be placed, and if the same is a stake or tree it must be not less than three feet in height above the ground, and not less than three inches in diameter, hewed on four sides. Such stakes or posts shall be marked with the name or number of the claim and the number of the corner or angle. The initial stake or post shall be one of the corner stakes. The locator shall post or write upon such initial post or stake a notice of location, which shall contain: (a) the name or number of the claim; (b) the name of the locator; (c) the date of discovery and of posting notices on the claim; (d) the number of feet in length and width of the claim.

4th. The statutes of Alaska require that, within ninety days after such location, the locator shall record, with the recorder of the district where such claim is located, a certificate of location, which certificate shall contain the name or number of the claim, the name of the locator, date of discovery and of posting location notice, the number of feet in length and width of the claim, a description with reference to some natural object, or permanent monument, or well known mining claim, and a description of the boundaries so far as applied to the numbering of stakes or monuments.

And you are instructed further, that a failure on the part of the plaintiff to make such a discovery as the law given in these instructions, declares to be

necessary, or a failure on his part to comply with the markings of said claim or the posting of the notice of location on the initial stake or post or in the recording of such certificate of location, then such location was and is null and void, and the ground covered by the same remained as part of the public domain and was open for relocation by any qualified locator.

15,

The plaintiff claims a verdict at your hands upon two grounds:

1. That he made a prior valid location of what is known in the testimony as the Hillside Bench Claim long prior to the entry of defendants thereon, and that prior to their entry, the lode which they claim to have located was an unknown lode.

2. That he himself made a valid lode location of the said lode on July 25, 1921, at which time it was then a known lode.

The jury are further instructed that, in order for the plaintiff to establish his right to the possession of the ground included in his location of what is called by him the Hillside Bench Placer Claim, upon the basis of his prior location and ownership of said placer claim, it is incumbent upon the plaintiff to prove substantially,

- 1st. That he made such a discovery of gold or other mineral upon the placer mining claim described in his complaint as would warrant a man of ordinary prudence, not necessarily a miner, in spending further time and means on said claim with a reasonable hope of developing a paying placer mine, taking all of the natural conditions into consideration.

2nd. That he wrote or posted upon the initial post or stake of the placer claim described in his complaint, a notice of location containing (a) the name or number of the claim; (b) the name of the locator; (c) the date of discovery and of posting notice on the claim; (d) the number of feet in length and width of the claim.

3rd. That he marked the location of the placer claim described in his complaint, on the ground, so that its boundaries could be readily traced, by placing at each corner or angle thereof substantial stakes or posts, not less than three feet high upon the ground and not less than three inches in diameter, hewed on four sides, and the stakes or posts so used must each be marked with the name or number of the claim, and the designation by number of the corner or angle.

4th. That, within ninety days after the discovery and posting of the notice of location, he recorded with the recorder of the Kantishna district, a certificate of location which contained; (a) the name or number of the claim; (b) the name of the locator or locators; (c) the date of discovery and of posting of the location notice; (d) the number of feet in length and width of claim; (e) a description with reference to some natural object permanent monument, or well known mining claim, together with a description of the boundaries thereof so far as applied to the number of the stakes or monuments.

5th. That he performed the annual assessment work upon said Hillside Bench Placer Claim to an extent of not less than \$100.00 for the year 1920, prior

to July 1, 1921.

And you are instructed further, that a failure on the part of the plaintiff to make such a discovery as law, given in these instructions, declares to be necessary, or a failure on his part to comply with the markings of said claim or the posting of the notice of location on the initial stake or post, or in the recording of such certificate of location, then such location was and is null and void, and the ground covered by the same remained as part of the public domain, and was open for relocation by any qualified locator.

16.

The jury are hereby instructed that in order that the plaintiff should recover, if at all, he must recover on the strength of his own title and not upon the weakness of the title of defendants.

17.

The jury are further instructed that the burden is upon the plaintiff to prove a prior valid placer location of the Hill Bench Placer claim, or a valid prior quartz location of the Hillside Lode Claim, as described in his complaint, and if the plaintiff has failed to prove any of the acts or things made essential by Acts of Congress or by Acts of the Territorial Legislature now in force, with reference to the acts necessary to make a prior valid location of such placer or quartz mining claim, then your verdict should be for the defendants, as the defendants are not required to introduce any evidence until the plaintiff has first proved the making by him of a prior valid placer or quartz mining location, as set forth in

his complaint.

18.

You are further instructed that, when a placer location has been completed, it becomes property in the highest sense of the term, and is equivalent to a grant from the government, subject only to the condition imposed of performing annual labor thereon until patent is applied for, and the owner of such valid placer location is entitled to the exclusive possession thereof and to everything underneath, including any unknown lode or lodes, but he acquires no title or right of possession to any known lode or lodes.

19.

You are instructed that defendants herein claim that:

1st. Plaintiff Grant did not make a valid placer location of what is known in the testimony as the Hillside Bench Claim, and that the same was and is void, and that even if said placer claim was valid and not void, that the lode or vein upon which they located the Silver King Lode Claim was, at the time of entry of defendants upon what is known in the evidence as the Hillside Bench Placer Claim, a known lode.

2nd. That defendants made a valid location of the Silver King Lode Claim prior to plaintiff.

You are also instructed that in order to make a valid location of a quartz claim under the provisions of the laws of the United States and Alaska, it is necessary that the locator shall be a citizen of the United States, or shall have declared his intention to be such, and

1st. That such location be made upon a vein, lode or ledge of rock in place, bearing gold, silver, cinnabar, lead, tin, copper or other valuable mineral deposit, which is subject to entry and patent as a lode claim under the mining laws of the United States.

2nd. That the said lode be discovered by the locator upon, open unappropriated public domain, or public mineral lands of the United States.

3rd. That said discovery of rock in place containing gold, or other precious minerals as above enumerated, be made by the locator within the boundaries of his mining claim, as claimed; that said discovery be such as would justify a person of ordinary prudence, not necessarily a skilled miner, in the further expenditure of his time or means in an effort to develop a paying lode mine, taking into consideration the character of the ground sought to be located, its location and surroundings with reference to the existence of other lode mines or discoveries, if any in the same vicinity.

4th. That in making the location of said lode claim, the locator post a notice of location upon the claim, containing the name of the lode or claim, the name of the locator or locators, and the number of linear feet claimed in length along the center line of the claim, each way from the point of discovery, with the width on each side of center line of the claim at the surface, and the general course of the vein or lode as near as can be determined.

5th. That the locator mark upon the ground the boundaries of his location as claimed, so that the same can be readily traced, and the discovery upon

which the location is based must be at the time of location defined upon the ground by the removal of so much of the surface material as may be necessary clearly to expose to view the discovery claimed, and in such manner as to perpetuate its identity; and preserve it, so far as practicable, from obliteration; also its locus must be witnessed by erecting a substantial monument or post, bearing the notice of location as near the discovery as practicable.

That the boundaries of the claim as marked upon the ground consist of no less than the following: The erection at each corner of the claim, and at each angle in the side lines if such there be, of a substantial monument or stake, or the blazing of a tree, at least three inches in diameter, each of which shall bear the initial of the lode or claim and a designation as to the point upon the boundaries of the claim which the said monument represents. The center line and both end lines shall be marked by blazing trees or cutting brush, or the erection of line monuments, as the nature of the country requires so that the lines of the location may be readily traced upon the ground. Where the true point for a corner or angle corner is for any reason inaccessible or the erection of a monument thereat is impracticable, a witness monument may be erected as near the true point as practicable, which witness monument must be so marked as to indicate with reference thereto, the position of the true point for the corner or angle point. Such witness corner or monument shall not be of lesser size than is prescribed for other corners. The completion of the marking of the boundaries of the claim upon the

ground shall follow the posting of the notice of location within a reasonable time, not to exceed thirty (30) days.

7th. That the locator, within ninety (90) days of the posting of the location notice upon the claim, record a certificate of location with the Recorder of the District within which the claim is located. Such certificate must contain date of location, name or names of locator or locators, and such a description of the claim, with reference to some natural object or permanent monument, as will identify the claim located, and may also contain such further matter as will serve to more completely describe the boundaries and locus of the claim.

20.

You are further instructed that, in locating either a placer or quartz mining claim, the order in which the acts necessary to a valid location are performed is not material. That is to say, the locator may make a discovery first, then mark the boundaries, or he may mark the boundaries first and afterwards make a discovery, provided that the rights of no other person has intervened before completion. And you are further instructed that a substantial compliance with the laws governing the location of quartz and placer mining claims is all that the law requires.

21.

You are instructed that in general it may be said that a lode or vein is a body of mineral, or a mineral body of rock within defined boundaries in the general mass of the mountain, and that the term 'lode' is

applicable, as used in the Act of Congress, above quoted, to any zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock. Geologists claim a lode or vein of mineral matter to be a fissure in the earth's crust, an opening in its rocks and strata made by some force of nature, in which the mineral is deposited. In order to constitute a lode or vein, there must be a lode or vein of mineralized rock or other like substance in place containing some of the precious metals. To constitute a discovery of a lode or vein, therefore, there must be a vein or lode in the earth's crust filled with quartz, or with some other kind of rock in place, carrying gold, silver, copper, lead, tin, zinc, cinnabar, or other valuable minerals. The width of the vein or lode is immaterial so long as it answers the above requirements. It may be thick in one place and of less extent in another. It is necessary only to discover a genuine mineral vein or lode at the point of discovery within the lines of the claim located, to entitle a miner to make a valid location thereof.

The term 'placer' as applied to a placer claim means a body of earth in which gold is found loose in sand or gravels, and not in the vein or rock in place; it includes gulch claims, old channels, cement, and drift diggings.

The term 'placer' includes every other valuable mineral deposit, excepting lodes or veins, whether in place or not in place.

22.

In respect to the sufficiency of discovery which will support a valid mining location, either in quartz or placer, you are instructed that "no location of a mining claim shall be made until discovery" of mineral within the limits of the claim located, and "where mineral has been found and the evidence is of such a character that a person of ordinary prudence, not necessarily a skilled miner would be justified in the further expenditure of his labor and means with reasonable prospect of success in developing a valuable mine, the requirements of the statute have been met."

You are further instructed that when controversy is between two mineral claimants, as in this case, the rule respecting the sufficiency of a discovery of mineral is more liberal than when it is between a mineral claimant and one seeking to make an agricultural entry, for the reason that where land is sought to be taken out of the category of agricultural lands, the evidence of its mineral character should be reasonably clear, while in respect to mineral lands in controversy between mineral claimants, the question is simply which is entitled to priority. But even in this case, there must be such a discovery of mineral as gives reasonable evidence of the fact either, that there is a vein or lode carrying precious mineral, or if it be claimed as placer ground, that there is also reasonable evidence that it contains placer deposits of mineral, valuable for placer mining.

23

With reference to the right of possession conferred by law upon the locator of a valid mining location,

you are instructed that a valid and subsisting location of mineral lands, whether quartz or placer made and kept up in accordance with the provisions of the statutes of the United States, has the effect of a grant by the United States of the right of present and exclusive possession of the lands located. And if, when one enters on land to make a location, there is another location in full force, which entitles its owner to the exclusive possession of the land, the first location operates as a bar to the second. Where there is a valid location of a mining claim, either quartz or placer, the area thereof becomes segregated from the public domain and the property of the locator. And this exclusive right of possession and enjoyment continues during the entire life of the location.

The locator's right of possession arises from and follows from his location in compliance with law, and he is not required to remain on guard upon his claim and be in the physical possession of it in order to have possession thereof.

24.

You are further instructed that the object of any notice or markings on the ground is to identify the claim, and to guide the subsequent locator, and to inform him as to the extent of the claim of the prior locator and whatever notice does this fairly and reasonably should be held to be a good notice.

25.

You are further instructed that, where a qualified locator attempts to make a location of a mining claim, either in quartz or placer, and fails to comply substan-

tially in any respect in the performance of any of the acts necessary to constitute a valid mining location, either in quartz or placer, as herein explained to you. such location is null and void and of itself confers no rights whatever upon the locator, when the same is challenged by any subsequent locator, who complies fully with the requirements of the law as to location, even though his entry thereon be subsequent to the first attempted location.

25—a.

You are instructed that it is not necessary for a locator of a placer claim to actually and personally place substantial stakes at each corner of the claim he is attempting to locate, where any of such stakes are already in place where he desires to place them, and he may, with the consent of the owner of an adjoining claim, adopt any of such adjoining owner's stakes, which may answer his purpose at the time, but it is for the jury to say whether or not such adopted stakes substantially answer the requirements of the statute.

26.

The jury are further instructed that in order for a person to lawfully locate a mining claim for another person, it is necessary that he procure a power of attorney from such person and record the same in the judicial division in which the ground is situated and if you find from a preponderance of the evidence in this case that the plaintiff herein located the Hillside Bench placer claim for Thomas P. Aitken, then the Court instructs you that such location is void as to these defendants, as it has not been shown that he

either had or recorded a power of attorney from Thomas P. Aitken.

27.

You are further instructed that where a person has a right to locate a lode claim, by reason of a valid discovery on ground open for location, he may, if he can do so peacefully, place his end line, or end lines, within the boundary of another valid location, for the purpose only of making such end lines parallel with each other.

28.

You are instructed that, of itself, a valid placer location gives the locator thereof no right to a known lode within its exterior boundaries merely by virtue of his placer location, and that if such known lode exists within said boundaries, he may locate the same as a lode mining claim and thereby acquire a valid right thereto in addition to his placer claim, but if he fails to locate such known lode as a lode claim, another, or others, may do so, providing they do so peaceably, and not forcibly, and not fraudulently,

29.

You are further instructed that, in this case, if you find, from a preponderance of the evidence, that plaintiff had a valid placer location at the time that the defendants entered upon the same, and sank a shaft into the ground within the boundaries of such placer location, in order to discover a lode or vein, not known to exist, and that thereby they did discover a lode or vein theretofore not known to exist within such boundaries of such claim, and thereupon located the same, then you are instructed that such acts upon

the part of defendants were unlawful, and that they could not initiate any title to such lode or vein, discovered and located in that manner; but, if said lode or vein was theretofore known to exist, and defendants merely uncovered the same, as one of the acts necessary to their location thereof as a lode mining claim, then you are instructed that such acts on the part of defendants were lawful, and they could initiate a good title to such known lode.

30.

You are further instructed that, where the existence of a vein or lode is not known to exist within the boundaries of a valid placer claim, no person, other than the owner of said placer claim, has the right to enter upon or into, such placer claim, for the purpose of discovering such vein or lode, and locating the same as a lode claim, and whosoever attempts to do so, without the consent of the placer claim owner, or against his knowledge or will, is a trespasser, and no rights of any nature whatsoever can be initiated to such lode or vein within the boundaries of such placer claim by any person, or persons, trespassing upon the rights of the owner of such placer mining claim; but, on the other hand, one may enter peaceably, and has the right so to do, within the boundaries of a valid placer claim, for the purpose of uncovering a vein or lode known then and theretofore to exist therein, for the purpose of locating the same and where such entry is peaceable and not forcible or fraudulent he is not a trespasser and may initiate a valid right to such known lode or vein.

31.

You are hereby further instructed that if you find from a preponderance of the evidence that the lode upon which defendants made a discovery on their Silver King Lode claim, described in their answer, was a known lode within the boundaries of plaintiff's alleged placer claim and that their entry upon the same and discovery of the same was made peaceably and in good faith, then you are instructed that they had a right to make such discovery, notwithstanding the prior placer location,—for a known lode, bearing gold, silver or other valuable metals within a prior located placer claim is open for location and may be located by any person qualified to make mining locations, providing that such location is made peaceably and in good faith.

32.

The jury are further instructed that, under the law, provision is made for the location of lode claims and for the location of placer claims, and that each claim is distinct from the other, and that it is recognized in the statutes that a valid placer claim and a valid lode claim may exist within the same superficial area, and that a lode claim located within the superficial area of a prior placer location may validly exist at the same time of the existence of the placer location and that both claims may be valid mining claims, one as a placer claim and the other as a lode claim, and both may be owned by the same person or each may be owned by a different person.

33.

You are further instructed that before any per-

son can at any time go upon a valid placer claim for the purpose of locating any lode or vein, the existence of such lode or vein must be a matter of knowledge, and so long as a lode or vein is not known to exist within the limits of the placer claim, it is unlawful for one to enter thereon for the purpose of prospecting for an unknown lode or vein, with the hope of discovering and locating such vein or lode, without the consent of the owner of said placer claim, or his acquiescence afterwards in and to such unlawful entry, thereby assenting thereto.

34.

You are further instructed that, before a lode is known to exist, or before it becomes a known lode or vein, there must be knowledge of its existence, as distinguished from opinion, supposition, belief or calculation.

It must also be known at least to the extent that it has already been discovered, for a lode or vein not discovered can not be said to be known to or by anybody.

It must also be a known lode of known practical value for working as a lode mining claim.

35.

You are further instructed that, when one seeks to, and does, discover and locate an unknown vein or lode within the boundaries of a valid placer claim, and posts a notice or files of record a location certificate thereof, giving the date of the discovery of an unknown lode or vein by him, as being after and subsequent to his entry thereon, he thereby admits

that the lode or vein so discovered, was, prior thereto, unknown by him, and unknown by him at the time of his entry upon such placer location.

But if one seeks to, and does, locate a known vein or lode within the boundaries of a valid placer claim, and posts a notice or files of record a location certificate thereof, giving the date of the discovery by him of such known lode or vein, as being after and subsequent to his entry thereon, such date so given would be no admission that it was theretofore unknown to him and would indicate the date of his appropriation of said lode as his, and would be one of the acts required of him in locating the same in compliance with the laws of the United States and Territory of Alaska.

You are further instructed that it is equally necessary that a valid mineral discovery be made by the locator upon a known lode, to support the location thereof as a lode claim, as that such discovery be made by the locator upon an unknown lode for the same purpose.

36.

The jury are further instructed that, if they find that the defendants made a valid location of the Silver King lode claim, as described in their answer, upon a known lode, within the placer claim described in plaintiff's complaint, then the jury should find a verdict for the defendants, and should not take into consideration the width of defendants' quartz claim, as the width of the defendants' quartz claim is not involved in this case. On the other hand if said location was upon an unknown lode within

plaintiff's said placer claim, they should find for the plaintiff.

36—a.

Although there has been considerable testimony admitted in evidence as to whether defendants entered into a hole or shaft made by plaintiff, and made a discovery therein after continuing such hole or whether they, the defendants, started and sunk a new hole to make a discovery, I instruct you that as a matter of law, it is not material whether such discovery was in plaintiff's hole, or a new one. And that one of the important facts for you to determine by a preponderance of the evidence, is, whether the vein or lode claimed by defendants was known to exist, or was not known to exist, within the then boundaries of plaintiff's placer claim, at the time defendants entered; provided you find that at such time such placer claim of plaintiff's was a valid placer mining claim.

37.

You are instructed that it is uncontradicted in the evidence in this case that at the place where defendants sunk a shaft, as disclosed by the evidence, and at the bottom thereof they made a valid mineral discovery upon a certain lode or vein of rock in place, containing valuable minerals and it is contended by the defendants that at the time they commenced to sink said shaft and prior thereto, the said lode, which it is uncontradicted that they discovered, was a known lode. On the other hand it is contended by the plaintiff that said lode was an unknown lode. In the determination of the question

whether said lode was a known lode, as claimed by defendants, or an unknown lode, as claimed by the plaintiff, you should consider all the competent evidence in the case bearing upon said question at the time defendants commenced work upon said shaft and prior thereto, and not after. You should also consider the said question in the light of the then known character and topography of the land in the vicinity of and surrounding the said shaft, as disclosed by the evidence, any and all prior discoveries if any, of a lode in the vicinity of or adjacent to said shaft, the general course, direction, strike, continuity, or lack of continuity so far as then known, of any such lode then discovered, and all the acts of the parties, either plaintiff or defendants, as disclosed by the evidence, or declarations made by them or either of them, if any, in the near vicinity of the place where said shaft was sunk by defendants, and prior to the sinking thereof, together with all surrounding facts and circumstances bearing upon said matter in the entire evidence and testimony in the case, prior to the sinking of said shaft, as well as the further fact that a true fissure lode or vein is admitted by plaintiff to have been discovered in the month of August, 1920, by J. B. Quigley, within the limits of the Hillside Bench Placer Claim, as claimed by the plaintiff to have been originally staked and located by him upon the 20th day of April, 1920.

38.

You are instructed that, if you find from a preponderance of the evidence, that the plaintiff had a valid placer mining location, known as the Hillside

Bench Placer Claim, by virtue of location thereof, made on the 20th day of April, 1920, and that thereafter J. B. Quigley made a valid location of the lode claim known as the Red Top Lode Claim, extending through the upper side line of the said Hillside Bench Placer Claim, within the boundaries thereof, and that such location was made by said Quigley with the acquiescence of the plaintiff, or that he did not object thereto then I instruct you that the appropriation of a part of plaintiff's placer claim by the said Quigley would not operate against the plaintiff so as to deprive him of any portion of the balance of his said claim or of any portion of the said Hillside Bench Placer Claim not included in Quigley's location of the Red Top Lode Claim.

39.

You are further instructed that prospectors and locators of mining claims in Alaska, who are generally neither surveyors nor lawyers, in locating upon the unsurveyed mineral lands, frequently locate claims which are in excess in area of the amount allowed by law, and that, unless the excess is unreasonably large, the location is valid. The excess, that is to say the amount over twenty acres, in a single placer claim, can be located by any person without the consent of the placer claimant, providing such excess is taken from the end farthest away from the initial stake. You are further instructed that the locator may also voluntarily cast off the excess or any part thereof from his claim; and if you find, from a preponderance of the evidence, that, prior to the entry of defendants upon the Hillside Bench Placer Claim

as claimed by the plaintiff, the plaintiff did cast off, by agreement, expressed or implied, with one J. H. Quigley, any portion of plaintiff's placer claim as originally located and claimed, or if you find, from a preponderance of the evidence, that said Quigley made a valid location of his Red Top Lode Claim, partly within the boundaries of and covering a part of plaintiff's placer claim, and that plaintiff either acquiesced in or did not object to the act of Quigley, or to said Quigley's location of said Red Top Lode Claim, then such part thereof as was either so cast off by plaintiff, or included in said Quigley's location with the consent or acquiescence of plaintiff, could not thereafter be deemed to be a part of plaintiff's placer location; provided, however, that you find from a preponderance of the evidence that at the time of entry of defendants upon the said Hillside Bench Placer Claim, the same was a valid placer mining location of plaintiff's.

40.

You are further instructed that if you find from a preponderance of the evidence that one J. B. Quigley, prior to the discovery and location of defendants of the Silver King Mining Lode as claimed by them, made a valid quartz location known as the Red Top Lode Claim, partly within the boundaries of plaintiff's placer mining claim, with the consent of plaintiff or that the said plaintiff either acquiesced in or did not object to said Quigley's location of said Red Top Lode Claim, that then the portion of said Quigley's Red Top Lode claim lying within the boundaries of plaintiff's placer claim as originally located, could

not thereafter be deemed to be any part of plaintiff's said placer claim, and that these facts, if you find by the preponderance of testimony that such facts exist, may be taken into consideration by you in determining whether the vein or lode located by defendants was, or was not, a known vein within the limits of plaintiff's placer claim, before, or at the time, defendants discovered and located the Silver King Lode Mining Claim, as claimed by them; provided, however, that you find from a preponderance of the evidence that, at the time of defendants' discovery and location, plaintiff was the owner of a valid placer mining claim, known as the Hillside Bench Placer Mining Claim.

41.

You are instructed that it is proven by the plaintiff, and conceded by the defendants, that J. B. Quigley, in the month of August, 1920, made a valid location of what is known as the Red Top Lode Claim, as described in the evidence herein, and you are further instructed that there is no controversy in this case between the plaintiff, herein, and one J. B. Quigley, although the consideration of the evidence, herein, may relate to the claim of said Quigley; and you are hereby instructed that any verdict you may render in this case will not affect any controversy between said Quigley or plaintiff which may, or may not, hereafter arise, or the rights of any person not named as a party in this suit.

42.

You are instructed that if you find and believe

from a preponderance of all the evidence in the case that the plaintiff, William Grant, made a valid location of the Hillside Bench Placer Claim, as claimed by him, which he completed on the 20th day of April, 1920, and that in said year, or prior to July 1, 1921, he performed annual assessment work thereon, as required by law, to the extent of at least \$100.00 and if you further find from the preponderance of evidence that the lode or vein containing rock in place thereafter discovered on the 6th day of June, 1921, by the defendants, was theretofore unknown and not known to exist within the boundaries of said Hillside Bench Placer Claim as reduced in area following Quigley's location, if you find from a preponderance of the evidence it was so reduced in areas, then I instruct you that at the time of the entry of the defendants, upon said Hillside Bench Placer Claim to prospect for said unknown lode, they, the defendants, could not initiate any right or title to said lode, as against the plaintiff, Grant, and you should return a verdict for the plaintiff.

You are further instructed, however, that if you find from a preponderance of evidence that the lode so discovered by the defendants was, at the time of the entry of defendants thereon, a known lode, known to exist within the boundaries of the plaintiff's Hillside Bench Placer Claim as reduced in area as aforesaid, by the Quigley location of the Red Top Lode Claim, then and in that case, even though the plaintiff Grant, had then and theretofore a valid prior placer location, known as the Hillside Bench

Placer Claim, within the boundaries of which, as reduced in areas following the aforesaid Quigley location, said known lode existed; the defendants herein had a legal right to locate said lode under the laws of the United States and of this Territory, and if you find from a preponderance of the evidence that they did so locate said lode substantially in the manner prescribed by law, as heretofore given to you in these instructions, or that they had made no valid location thereof, but were actually in possession thereof at the time of its commencement of this action, you should find for the defendants.

You are further instructed that possession which is actual and notorious would prevail against one who has neither title or possession.

43.

You are instructed that, if you find, from a preponderance of the evidence, that the lode in controversy herein was, on the 6th day of June, 1921, upon open, unappropriated public mineral lands of the United States, and not subject in any way to the rights of the plaintiff, Grant, by virtue of his location, as claimed by him, of the Hillside Placer Claim, and by virtue of the said lode being then and theretofore an unknown lode, as claimed by him, then you should consider the respective rights, if any, which either the plaintiff or the defendants have, by virtue of their claimed locations of said lode as lode mining claims.

The defendants claim that they located the Silver King Mining Lode on June 6th., 1921, and the plaintiff claims he located the Hillside Lode Claim on the 25th day of July, 1921.

It is for the jury, from the preponderance of the whole evidence, and these instructions, to say whether or not the defendants made a valid quartz mining location upon the Silver King Lode Claim on the 6th day of June, 1921.

If you find, from a preponderance of the evidence, that they did so, then the said lode could not thereafter be legally appropriated or located by the plaintiff, Grant, on July 25, 1921.

On the other hand, if you find that the defendants did not make a valid location of the Silver King Lode Claim on June 6, 1921, then the same would be open and unappropriated and as if no such attempted location by them had been made, and said plaintiff, Grant, could lawfully locate the same on July 25th, 1921, and in that case, it is for you to say and find whether the plaintiff, Grant, did or did not make a valid location of the Hillside Lode Claim on July 25th, 1921.

From the evidence in the whole case and from the instructions heretofore and now and hereafter herein given you, it is for you to say and find what the facts are in respect to the validity of these respective lode locations, of the defendants on the one hand and of the plaintiff on the other, bearing in mind that he who is prior in point of time is prior in right, and bearing in mind also all of the acts necessary and essential to constitute the location of a valid lode or quartz mining location under the law, as heretofore in these instructions specifically laid down, especially with reference to qualifications of the locator, and

to discovery, marking on the ground of the boundaries so they can be readily traced, size and character and numbering of stakes, and writing thereon, and recording of notice of location within ninety (90) days from the date of discovery, and the contents of said notice.

44.

You are instructed that it is not necessary that a locator should be the first discoverer of mineral in order to make a valid location, but in order to do so upon a prior discovery by another person, such discovery must not only be a valid mineral discovery, but he must have knowledge of the former discovery, and such actual discovery must be adopted and claimed by him in order to give validity to his location.

Therefore if you find from a preponderance of the evidence that the defendants did not make a valid location of the Silver King Lode Claim, but made a valid mineral discovery thereon, of which the plaintiff, Grant, had actual knowledge, and that he actually adopted and claimed said discovery, then such adoption and claim by him to the former discovery by defendants would serve for him as a valid discovery to support his location of the Hillside Lode Claim, provided you find from a preponderance of evidence that said lode was not theretofore legally appropriated by the defendants in the Silver King Lode Claim, as claimed by them.

45.

You are further instructed that since you are the sole judges of all facts which have been proven in the trial, you should not permit remarks or expres-

sions of opinions by counsel to influence your judgment, except as the same conform to the facts proven, or are reasonably deducible from such facts and the law of the case as laid down in these instructions.

46.

You are instructed that you should consider no evidence sought to be introduced but excluded by the Court, nor should you consider any evidence stricken from the record by the Court, nor should you take into consideration in making up your verdict any knowledge or information known to you, not derived from the evidence given by the witnesses on the witness stand. Whatever verdict is warranted by the evidence under the instructions of the Court, you should return, as you have sworn so to do.

47.

You are instructed that it is manifestly impossible for the Court to cover the law of this case in merely one, or even a few instructions, and therefore, you should not single out any one instruction to the exclusion of all others as governing the decision of this case, but you should carefully and seriously consider all these instructions on the law of the case together and not disconnectedly.

Pursuant to these instructions I have prepared two forms of verdict which you will take into the jury room and you will sign the one upon which you unanimously agree and return it into Court as your verdict. The other form you will destroy.

The first form of verdict finds in favor of the plaintiff and the second in favor of the defendants.

Herewith I hand you these instructions for your guidance, together with such exhibits as have been introduced in evidence, and the pleadings in the case, and the forms of verdict above mentioned.

Cecil H. Clegg, District Judge.

Dated at Fairbanks, Alaska this 9th day of February 1922.

(Title of Court and Cause.)

**Instructions Tendered on Behalf of Defendants and
Refused by the Court.**

IX.

The jury are further instructed that a perfected placer location prior to application for patent does not preclude others from entering upon the same and discovering and locating unknown veins or lodes provided entry for the purpose can be made peaceably and the jury are instructed that if these defendants entered upon the Hillside Bench placer mining claim peaceably and in good faith and prospected thereon and discovered thereon a vein or lode and located as a result of such discovery the Silver King lode mining claim, then you should find a verdict in favor of defendants.

Refused—Cecil H. Clegg, Judge.

Exception—Exception allowed—Cecil H. Clegg, Judge.

X.

The jury are further instructed that a prospector may enter a prior placer mining location and make a discovery on an unknown lode which will be a val-

id lode claim providing he complies with the law in making such a location provided that his entry upon the placer claim shall be made peaceably, openly, notoriously and in good faith and shall have been made before an application for patent has been made by the placer locator.

Refused—Cecil H. Clegg, Judge.

Exception—Exception allowed—Cecil H. Clegg, Judge.

XII.

'The jury are further instructed that if they find that the defendants entered upon the superficial area of the Hillside Bench placer mining claim peaceably and in good faith and without interruption made a discovery of a vein or lode of rock in place and peaceably and quietly marked the exterior boundaries of the same and posted a notice of location as required by law, and recorded the same, then you should find for the defendants and in that case the width of defendants' Silver King Lode Mining Claim would be reduced in width to twenty-five feet on each side of the center of the vein.

Refused—Cecil H. Clegg, Judge.

Exception—Exception allowed—Cecil H. Clegg, Judge.

XIII.

The jury are further instructed that an owner of a placer mining claim may consent to a prospector entering upon and prospecting for an unknown lode and if plaintiff consented either to defendants entering upon the Hillside Bench placer claim and prospecting or if he consented to their prospecting after

entry, or if he consented to their working upon the lode after discovery made, then you should find for the defendants and you are authorized to take into consideration the conduct of the plaintiff toward these defendants whether or not he permitted them to work upon the placer claim after he knew that they were working thereon and whether or not he failed to object to their continuing work after he knew that they had made a discovery of a lode on said placer claim all for the purpose of arriving at a conclusion as to whether or not plaintiff consented at any time to their working on said placer claim for the purpose of locating a lode or for the purpose of working a lode after they had discovered the same.

Refused—Cecil H. Clegg, Judge.

Exception—Exception allowed—Cecil H. Clegg, Judge.

Defendants' Exceptions to Court's Instructions to the Jury.

BY MR. ROTH:

Instruction No. 18.

Exception taken to that part of Instruction No. 18 which refers to the right of exclusive possession of a placer location, upon the ground and for the reason that it does not embody an entry for the purpose of locating a known lode.

Instruction No. 20.

Exception taken to that part of Instruction No. 20 which states that a substantial compliance with the laws covering the location of quartz and placer min-

ing claims is all the law requires, for the reason that same is contrary to law.

Instruction No. 22.

Exception taken to that portion of Instruction No. 22 which provides that where a controversy is between two mineral claimants, as in this case, the rule respecting the sufficiency of a discovery of mineral is more liberal than when it is between a mineral claimant and one seeking to make an agricultural entry, for the reason that the same contemplates and conveys the idea to the jury that a placer claim and a lode claim are similar in character, whereas, they are different in character and the rule as between those two classes of mineral locators is the same practically as the rule between a mineral and agricultural claimant.

Instruction No. 23.

Exception taken to that part of Instruction No. 23 referring to the right of possession of an owner of a valid placer location, because it does not take into consideration the entry of another for the purpose of locating a known lode.

Instruction No. 24.

Exception taken to Instruction No. 24 and the whole thereof on the ground and for the reason that same does not state the law correctly, as it would leave the question as to a compliance with the statute in order to initiate a valid mining claim, as to whether or not the notices could be reasonably considered to give notice, whereas the statute states specifically what it must contain.

Instruction No. 25—a.

Exception taken to Instruction No. 25—a upon the ground and for the reason that same is contrary to requirements of the statutes compelling a locator of a placer mining claim to place stakes at each corner or angle of the claim.

Instruction No. 29.

Exception taken to Instruction No. 29 because it declares that an entry upon a valid placer mining claim for the purpose of discovering an unknown lode is in any event invalid, whereas under the law, if the entry is made peaceably and in good faith, the entry will be valid.

Instruction No. 30.

Exception taken to Instruction No. 30 upon the grounds and for the reason stated in exception to Instruction No. 29.

Instruction No. 33.

Exception taken to Instruction No. 33 upon the ground and for the reason expressed in exceptions to Instructions Nos. 29 and 30.

Instruction No. 35.

Exception taken to the first paragraph of Instruction No. 35 upon the ground and for the reason that it is not a statement of the law covering the subject.

Instruction No. 36

Exception taken to the latter portion of Instruction No. 36 which refers to an entry upon an unknown lode upon the ground and for the reason that same is contrary to law.

Instruction No. 36—a.

Exception taken to that part of Instruction No. 36—a which refers to the entry being confined to the location of a vein or lode known to exist, for the reason that where an entry is made peaceably and in good faith and an unknown lode discovered a mining claim located as a result of such discovery is valid.

Instruction No. 38.

Exception taken to Instruction No. 38 upon the ground and for the reason that any entry of J. B. Quigley on the Hillside Bench Placer Claim and a discovery of a lode by him within the exterior boundaries of said Hillside Placer Claim would make it a known lode within the exterior boundaries of such placer claim, and for the further reason that it does not take into consideration the evidence which goes to prove that J. B. Quigley made a discovery of a lode within the exterior boundaries of the Hillside Bench Placer Claim before he staked the Red Top Lode Claim, and before he received any promise or right by any owner of the Hillside Bench Placer Claim or with their consent or with their knowledge.

Instruction No. 39.

Exception taken to that portion of Instruction No. 39 which refers to the casting off of any part of the Hillside Bench Placer Claim, upon the ground and for the reason that there is no evidence in the case that such owner ever cast off any portion of the same.

Instruction No. 40.

Exception taken to Instruction No. 40 and that por-

tion of same which instructs the jury that any part of the Hillside Bench Placer Mining Claim was, or could be, eliminated from the boundaries of the Hillside Bench Placer Claim by virtue of any location of the Red Top Quartz Claim by J. B. Quigley.

Instruction No. 42.

Exception taken to Instruction No. 42 and that portion thereof which instructs the jury that any location of the Red Top Lode Mining Claim by J. B. Quigley would or could under any circumstances reduce the exterior boundaries of the Hillside Bench Placer Claim, or that in the event of such location, that a discovery of a lode on the same could not be considered as being within the exterior boundaries of the Hillside Bench Placer Mining Claim, the same being contrary to law.

Exception was taken by the defendants to each and all of the instructions mentioned, to-wit: 18, 20, 22, 23, 24, 25a, 29, 30, 33, 35, 36, 36a, 38, 39, 40 and 42 and that said exceptions were taken in the presence of the jury, in open Court, at the conclusion of the trial and before the said cause was submitted to the said jury and that each and all of said exceptions were duly allowed by the Court and the same are now allowed.

And now, in furtherance of justice and that right may be done, the defendants present the foregoing Bill of Exceptions in this cause and pray that the same may be settled and allowed and signed and cer-

tified by the Judge of this Court, in the manner prescribed by law.

R. F. ROTH

Attorney for Defendants.

I hereby certify that the foregoing is a full, true and correct copy of the Bill of Exceptions in the above entitled cause.

R. F. ROTH.

Attorney for Defendants

Service of a copy of the foregoing proposed Bill of Exceptions is hereby acknowledged this 25th day of April, 1922, at Fairbanks, Alaska.

MORTON E. STEVENS

Attorney for Plaintiff

(Title of Court and Cause.)

Order Settling and Allowing Bill of Exceptions

BE IT REMEMBERED that upon the 7th day of August, 1922, the above named defendants presented their Bill of Exceptions to the above entitled Court for allowance and settlement, which said proposed Bill of Exceptions was served and filed within the time allowed by the order of this Court and was duly presented to this Court for settlement as required by law and the rules of this Court, and which said Bill of Exceptions consists of the foregoing typewritten pages of the proceedings and testimony of the witnesses offered and given by the respective parties upon the trial of said cause, as well as the exhibits introduced on the trial thereof and all documentary and other evidence given on said trial.

And in appearing to the Court from the examination of said Bill of Exceptions that the same contains all the evidence, testimony and exhibits introduced upon the trial of said cause, as well as all and singular the proceedings had therein not of record, and is in all respects true and correct.

Now therefore, on motion IT IS HEREBY ORDERED AND ADJUDGED that the foregoing type-written pages from 1 to 632 inclusive, be and the same is hereby approved, allowed and settled as the Bill of Exceptions of the above entitled cause and made a part of the record thereof.

AND IT IS FURTHER ORDERED AND ADJUDGED that the foregoing Bill of Exceptions consists of all of the evidence, testimony, exhibits and proceedings upon the trial of the above entitled cause not appearing of record and that the foregoing Bill of Exceptions is in all respects true and correct, and the same is hereby settled and allowed.

Done at Fairbanks, Alaska, this 8th day of August, 1922.

CECIL H. CLEGG

District Judge

Entered in Court Journal No. 15 page 495.

Indorsed:

Filed in the District Court, Territory of Alaska, 4th Div. Aug. 8, 1922. Rob't. W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

Lodged April 28, 1922. Rob't W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

Filed in the District Court, Territory of Alaska, 4th

Div. Aug. 8, 1922, Rob't. W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

Verdict

We, the jury, duly empaneled and sworn to try the issues in the above entitled case, find a verdict in favor of plaintiff, and that the plaintiff, herein, is entitled to the possession of the property described in plaintiff's complaint, expressly excluding therefrom that part covered by the location of J. B. Quigley, known as the Red Top Lode Claim.

Dated at Fairbanks, Alaska, this 10 day of February, 1922.

H. W. ATTWOOD.

Foreman.

Indorsed:

Filed in the District Court, Territory of Alaska, 4th Div. Feb 10, 1922 Rob't. W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

JUDGMENT

This cause came on regularly for trial before a jury on February 1st, 1922, the plaintiff appearing in person and by his attorney, and the defendants Campbell and Tobin, appearing in person and by their attorney, whereupon a jury of twelve men were regularly empaneled and sworn to try said action.

Witnesses on the part of plaintiff and defendants were sworn and examined, and documentary evidence

was introduced by the respective parties, and said trial continued from day to day, and after the respective parties herein, had introduced their evidence, and after the arguments of counsel and the instructions of the Court, the jury retired to consider of their veridict, and on February 10th, 1922, said jury returned into Court, and being called answered to their names, and thereupon rendered a verdict as follows:

"We, the jury, duly empaneled and sworn to try the issues in the above entitled case, find a verdict in favor of plaintiff, and that the plaintiff, herein, is entitled to the possession of the property described in plaintiff's complaint, expressly excluding therefrom that part covered by the location of J. B. Quigley, known as the Red Top Lode Claim.

Dated at Fairbanks, Alaska, this 10th day of February, 1922.

H. W. Attwood, Foreman.

That afterwards, to wit, on the 11th day of February, 1922, defendants, Campbell and Tobin, filed, herein, their motion for a new trial. That thereafter, and on the 24th day of February, 1922, said motion for a new trial was presented by defendants and argued by the respective counsel, herein, whereupon the Court overruled said defendants' motion for a new trial.

WHEREFORE by virtue of the law, and the reason of the premises, aforesaid:

IT IS HEREBY ORDERED AND ADJUDGED that the plaintiff herein, William Grant, is the owner

of and is entitled to the possession of, and that he do have and recover from the defendants, herein, the possession of all and singular that certain tract of placer mining ground known as the Hill Bench Claim, containing twenty acres, more or less, being opposite to, and adjoining and lying east of the Horse Shoe Placer Mining Claim on the right limit of Moose Creek, being 1320 feet, more or less, in length, and 660 feet, more or less in width; saving and excepting, and expressly excluding therefrom that portion covered by the location of J. B. Quigley known as the Red Top Lode Claim, in the Kantishna Precinct, Alaska; Also, all and singular, that certain quartz mining ground known as the Hillside Lode Claim, the center upper end post of said claim being within the boundaries of the above described placer mining claim and situate about 160 feet, more or less, downhill and in a westerly direction from the mouth of what is known as the Quigley Tunnel, said post being the discovery post on which the notice of location of said claim is posted; Thence running in a westerly direction and downhill along the vein, through said Hill Bench and Horse Shoe Placer Claims, a distance of 1500 feet to the center lower end line post of said quartz claim. The side lines of said Hillside Lode Claim running parallel to said lode, and twenty-five feet on either side of the center of the vein, in said Kantishna Precinct, Alaska.

That plaintiff do have and recover from said defendants plaintiff's costs and disbursements incurred in said action to be taxed.

Dated this 20th day of March, 1922.

CECIL H. CLEGG

District Judge

Entered in Court Journal No. 15, page 357.

Indorsed:

Filed in the District Court, Territory of Alaska, 4th Div. Mar. 20, 1922, Robt. W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

Stipulation Relative to Value of Property in Controversy.

IT IS HEREBY STIPULATED AND AGREED that the value of the property in controversy in this action exceeds the sum of Five Hundred dollars (\$500.00), and that the Judge of the above entitled court may make a finding in accordance herewith.

MORTON E. STEVENS

Attorney for Plaintiff

R. F. ROTH

Attorney for Defendant

Indorsed:

Filed in the District Court for the Territory of Alaska 4th Div. Sep 7, 1922, Rob't. W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

Order Approving Valuation of Property

Upon the agreement and stipulation of the parties in the above entitled cause that the property in controversy in this case is in excess of the value of

Five Hundred Dollars (\$500.00), the Court hereby finds that the same is true as a matter of fact.

Dated: Fairbanks, Alaska, September 7th, 1922.

CECIL H. CLEGG .

District Judge

Entered in Court Journal No. 15 page 512.

Indorsed:

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 7 1922. Rob't. W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

Title of Court and Cause)

Supersedeas Order

The defendants, William J. Campbell and J. L. Tobin, having this day filed their petition for a writ of error from the decision and judgment thereon made and entered herein, to the United States Circuit Court of Appeals in and for the Ninth Circuit, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of security which defendants should give and furnish upon said writ of error, and that upon the giving of said security all further proceedings of this court be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals in and for the Ninth Circuit, and said petition having this day been duly allowed:

NOW, THEREFORE, IT IS ORDERED that upon said defendants above named filing with the Clerk of this Court a good and sufficient Bond in the sum

of \$1000.00, and to the effect that if said defendants and plaintiffs in error shall prosecute the said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the said obligation to be void; else to remain in full force and virtue, the said bond to be approved by the Court; that all further proceedings in this court be, and they are hereby, suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals.

Dated this 7th day of September, 1922.

CECIL H. CLEGG

District Judge

Entered in Court Journal No. 15 page 512.

Indorsed:

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 7, 1922, Rob't W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, That we, William J. Campbell and J. L. Tobin, as principals and John Barrack and M. J. McDermott as sureties are held and firmly bound unto William Grant plaintiff above named, in the sum of One Thousand Dollars (\$1000.00), to be paid to the said plaintiff, his executors or administrators, for which payment well and truly to be made we bind ourselves, and each of our heirs, administrators or assigns, firmly by these

presents, sealed with our seals and dated the 7 day of September, 1922.

WHEREAS, the above named defendants William J. Campbell and J. L. Tobin, have sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit.

NOW, THEREFORE, the condition of this obligation is such that if the above named defendants shall prosecute said writ to effect and answer all costs and damages, if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and virtue.

Dated this 7th day of September, 1922.

Wm. J. CAMPBELL (SEAL)

J. L. TOBIN, (SEAL)

Principals.

JOHN BARRACK (SEAL)

M. J. McDERMOTT, (SEAL)

Sureties

United States of America. }
Territory of Alaska } ss.

John Barrack and M. J. McDermott sureties on the within and foregoing appeal and supersedeas bond, being first duly sworn, each for himself deposes and says; that he is a resident within the District of Alaska, that he is not a counsellor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court; that he is worth the amount specified in the foregoing bond over

and above all debts and liabilities and exclusive of property exempt from execution.

JOHN BARRACK
M. J. McDERMOTT

Subscribed and sworn to before me this 7th day of September, 1922.

R. F. ROTH

Notary Public for Alaska. My commission expires November 14, 1925.

(SEAL)

APPROVED; this 7th day of September, 1922.

CECIL H. CLEGG

Judge of the District Court.

Indorsed:

Filed in the District Court Territory of Alaska, 4th Div. Sep. 7, 1922, Rob't W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

Assignment of Errors

Come now the defendants in the above entitled cause, being the plaintiffs in error, and assign the following errors as having been committed by the above entitled court on the trial of the above entitled action, which errors the said defendants intend and do rely upon on their Writ of Error to be prosecuted to the United States Circuit Court of Appeals for the Ninth Circuit.

I.

The court erred in permitting the introduction of Plaintiff's Exhibit "B", which purports to be a "No-

tice of Location of Placer Claim," over the objection of defendants which said Notice is as follows:

Notice of Location of Placer Claim

Notice is hereby given that I, Wm. Grant, have discovered placer gold within the limits of this claim and have this day posted this notice of Location at the point of discovery. I claim 1320 feet in length by 660 feet in width as marked on the ground, for placer mining purposes. This claim shall be known as placer mining claim Hill Bench, opposite and on the East side of Horseshoe placer mining claim on the Right Limit of Moose Creek, Kantishna precinct, Territory of Alaska.

Discovery made Sept. 10, 1919. Location notice posted April 1920.

Witness:

Wm. Grant.

J. Hamilton.

Locator.

(Endorsement)

District of Alaska

Fourth Judicial Division

} ss.

Filed for record at request of Wm. Grant, on the 12th day of July 1920 at min. past 4:30 P. M. and recorded in Vol. 1, Gen., page 58.

Kantishna Recording District.

C. Herbert Wilson. Per L. E. W.

Recorder

II.

The court erred in denying defendants' motion for a non-suit.

III

The court erred in permitting John A. Davis, called as a witness for the defendants, from testifying on the ground that he was superintendent of the Alaska Station of the United States Bureau of Mines.

IV.

The court erred in denying defendants' motion for a non-suit made at the close of the evidence and just before argument.

V.

The court erred in refusing to instruct the jury as requested on behalf of the defendants as follows:

"The jury are further instructed that a perfected placer location prior to application for patent does not preclude others from entering upon the same and discovering and locating unknown veins or lodes provided entry for the purpose can be made peaceably; and the jury are instructed that if these defendants entered upon the Hillside Bench placer mining claim peaceably and in good faith and prospected thereon and discovered thereon a vein or a lode and located, as a result of such discovery, the Silver King lode mining claim, then you should find a verdict in favor of defendants."

VI.

The court erred in refusing to instruct the jury as requested by the defendants as follows:

"The jury are further instructed that a prospector may enter a prior placer mining location and make a discovery on an unknown lode which will be a valid lode claim provided he complies with the law in making such a location, provided that his entry upon the

placer claim shall be made peaceably, openly, notoriously and in good faith and shall have been made before an application for patent has been made by the placer locator."

VII.

The court erred in refusing to instruct the jury as requested by the defendants as follows:

"The jury are further instructed that if they find that the defendants entered upon the superficial area of the Hillside Bench placer mining claim peaceably and in good faith and without interruption made a discovery of a vein or a lode of rock in place and peaceably and quietly marked the exterior boundaries of the same and posted a notice of location as required by law and recorded the same, then you should find for the defendants and in that case the width of defendants' Silver King Lode Mining Claim would be reduced in width to 25 feet on each side of the center of the vein."

VIII.

The court erred in refusing to instruct the jury as requested on behalf of defendants as follows:

"The jury are further instructed that an owner of a placer mining claim may consent to a prospector entering upon and prospecting for an unknown lode, and if plaintiff consented either to defendants entering upon the Hillside Bench placer claim and prospecting, or if he consented to their prospecting after entry, or if he consented to their working upon the lode after discovery made, then you should find for the defendants and you are authorized to take into consideration the conduct of the plaintiff toward

these defendants, whether or not he permitted them to work upon the placer claim after he knew that they were working thereon, and whether or not he failed to object to their continuing work after he knew that they had made a discovery of a lode on said placer claim; all for the purpose of arriving at a conclusion as to whether or not plaintiff consented at any time to their working on said placer claim for the purpose of locating a lode or for the purpose of working a lode after they had discovered the same."

IX.

The court erred in instructing the jury as is contained in instruction No. 18 of the court's instructions to the jury, which is as follows:

"You are further instructed that when a placer location has been completed, it becomes property in the highest sense of the term, and is equivalent to a grant from the government subject only to the condition imposed of performing annual labor thereon until patent is applied for, and the owner of such valid placer location is entitled to the exclusive possession thereof, and to everything underneath, including any unknown lode or lodes, but he acquires no title or right of possession to any known lode or lodes."

X.

The court erred in instructing the jury as is contained in instruction No. 20 of the court's instructions to the jury, which is as follows:

"You are further instructed that in locating either a placer or quartz mining claim, the order in which the acts necessary to a valid location are performed is not material. That is to say, the locator may make

a discovery first, then mark the boundaries, or he may mark the boundaries first and afterwards make a discovery, provided that the rights of no other person has intervened before completion. And you are further instructed that a substantial compliance with the laws governing the location of quartz and placer mining claims is all that the law requires."

XI.

The court erred in instructing the jury as is contained in instruction No. 22 of the court's instructions to the jury, which is as follows:

"In respect to the sufficiency of discovery which will support a valid mining location, either in quartz or placer, you are instructed that 'no location of a mining claim shall be made until discovery' of mineral within the limits of the claim located, and 'where mineral has been found and the evidence is of such a character that a person of ordinary prudence, not necessarily a skilled miner, would be justified in the further expenditure of his labor and means with reasonable prospect of success in developing a valuable mine, the requirements of the statute have been met.'

You are further instructed that when controversy is between two mineral claimants, as in this case, the rule respecting the sufficiency of a discovery of mineral is more liberal than when it is between a mineral claimant and one seeking to make an agricultural entry, for the reason that where land is sought to be taken out of the category of agricultural lands, the evidence of its mineral character should be reasonably clear, while in respect to mineral lands in controversy between mineral claimants, the question is

simply which is entitled to priority. But even in this case, there must be such a discovery of mineral as gives reasonable evidence of the fact either, that there is a vein or lode carrying precious mineral, or if it be claimed as placer ground, that there is also reasonable evidence that it contains placer deposits of mineral valuable for placer mining."

XII

The court erred in instructing the jury as is contained in instruction No. 23 of the court's instructions to the jury, which is as follows:

"With reference to the right of possession conferred by law upon the locator of a valid mining location, you are instructed that a valid and subsisting location of mineral lands, whether quartz or placer, made and kept up in accordance with the provisions of the statutes of the United States, has the effect of a grant by the United States of the right of present and exclusive possession of the lands located. And if, when one enters on land to make a location, there is another location in full force, which entitled its owner to the exclusive possession of the land, the first location operates as a bar to the second. Where there is a valid location of a mining claim, either quartz or placer, the area thereof becomes segregated from the public domain and the property of the locator. And this exclusive right of possession and enjoyment continues during the entire life of the location.

The locator's right of possession arises from and follows from his location in compliance with law, and he is not required to remain on guard upon his claim

and be in the physical possession of it in order to have possession thereof."

XIII.

The court erred in instructing the jury as is contained in instruction No. 24 of the court's instructions to the jury, which is as follows:

"You are further instructed that the object of any notice or markings on the ground is to identify the claim, and to guide the subsequent locator, and to inform him as to the extent of the claim of the prior locator and whatever notice does this fairly and reasonably should be held to be a good notice."

XIV

The court erred in instructing the jury as is contained in instruction No. 25a of the court's instructions to the jury, which is as follows:

"You are instructed that it is not necessary for a locator of a placer claim to actually and personally place substantial stakes at each corner of the claim he is attempting to locate where any of such stakes are already in place where he desires to place them, and he may, with the consent of the owner of an adjoining claim, adopt any of such adjoining owner's stakes which may answer his purpose at the time, but it is for the jury to say whether or not such adopted stakes substantially answer the requirements of the statute."

XV.

The court erred in instructing the jury as is contained in instruction No. 29 of the court's instructions to the jury, which is as follows:

"You are further instructed that, in this case, if you find, from a preponderance of the evidence, that plaintiff had a valid placer location at the time that the defendants entered upon the same, and sank a shaft into the ground within the boundaries of such placer location, in order to discover a lode or vein, not known to exist, and that thereby they did discover a lode or vein theretofore not known to exist within such boundaries of such claim, and thereupon located the same, then you are instructed that such acts upon the part of the defendants were unlawful, and that they could not initiate any title to such lode or vein, discovered and located in that manner; but, if said lode or vein was theretofore known to exist, and defendants merely uncovered the same, as one of the acts necessary to their location thereof as a lode mining claim, then you are instructed that such acts on the part of defendants were lawful, and they could initiate a good title to such known lode."

XVI

The court erred in instructing the jury as is contained in instruction No. 30 of the court's instructions to the jury, which is as follows:

"You are further instructed that, where the existence of a vein or lode is not known to exist within the boundaries of a valid placer claim, no person other than the owner of said placer claim, has the right to enter upon or into, such placer claim, for the purpose of discovering such vein or lode, and locating the same as a lode claim, and whosoever attempts to do so, without the consent of the placer

claim owner, or against his knowledge or will, is a trespasser, and no rights of any nature whatsoever can be initiated to such lode or vein within the boundaries of such placer claim by any person, or persons, trespassing upon the rights of the owner of such placer mining claim; but, on the other hand, one may enter peaceably, and has the right so to do, within the boundaries of a valid placer claim, for the purpose of uncovering a vein or lode known then and theretofore to exist therein, for the purpose of locating the same and where such entry is peaceable and not forcible or fraudulent he is not a trespasser and may initiate a valid right to such known lode or vein."

XVII.

The court erred in instructing the jury as is contained in instruction No. 33 of the court's instructions to the jury, which is as follows:

"You are further instructed that before any person can at any time go upon a valid placer claim for the purpose of locating any lode or vein, the existence of such lode or vein must be a matter of knowledge, and so long as a lode or vein is not known to exist within the limits of the placer claim, it is unlawful for one to enter thereon for the purpose of prospecting for an unknown lode or vein, with the hope of discovering and locating such vein or lode, without the consent of the owner of said placer claim, or his acquiescence afterwards in and to such unlawful entry, thereby assenting thereto."

XVIII.

The court erred in instructing the jury as is con-

tained in instruction No. 35 of the court's instructions to the jury, which is as follows:

"You are further instructed that, when one seeks to, and does, discover and locate an unknown vein or lode within the boundaries of a valid placer claim and posts a notice or files of record a location certificate thereof, giving the date of the discovery of an unknown lode or vein by him, as being after and subsequent to his entry thereon, he thereby admits that the lode or vein so discovered, was, prior thereto unknown by him, and unknown by him at the time of his entry upon such placer location.

But if one seeks to, and does, locate a known vein or lode within the boundaries of a valid placer claim, and posts a notice or files of record a location certificate thereof, giving the date of the discovery by him of such known lode or vein, as being after and subsequent to his entry thereon, such date so given would be no admission that it was theretofore unknown to him, and would indicate the date of his appropriation of said lode as his, and would be one of the acts required of him in locating the seam in compliance with the laws of the United States and Territory of Alaska.

You are further instructed that it is equally necessary that a valid mineral discovery be made by the locator upon a known lode, to support the location thereof as a lode claim as that such discovery be made by the locator upon an unknown lode for the same purpose."

XIX.

The court erred in instructing the jury as is contained in instructions No. 36 of the court's instructions to the jury, which is as follows:

"The jury are further instructed that, if they find that the defendants made a valid location of the Silver King lode claim, as described in their answer, upon a known lode, within the placer claim described in plaintiff's complaint, then the jury should find a verdict for the defendants, and should not take into consideration the width of defendants' quartz claim, as the width of defendants' quartz claim is not involved in this case. On the other hand if said location was upon an unknown lode within plaintiff's said placer claim, they should find for the plaintiff."

XX.

The court erred in instructing the jury as is contained in instruction No. 36—a of the court's instructions to the jury, which is as follows:

"Although there has been considerable testimony admitted in evidence as to whether defendants entered into a hole or shaft made by plaintiff, and made a discovery therein after continuing such hole, or whether they, the defendants, started and sunk a new hole to make a discovery, I instruct you that as a matter of law, it is not material whether such discovery was in plaintiff's hole, or a new one. And that one of the important facts for you to determine, by a preponderance of the evidence, is whether the vein or lode claimed by defendants was known to exist, or was not known to exist,

within the then boundaries of plaintiff's placer claim, at the time defendants entered; provided you find that at such time such placer claim of plaintiff's was a valid placer mining claim."

XXI.

The court erred in instructing the jury as is contained in instruction No. 38 of the court's instructions to the jury, which is as follows:

"You are instructed that, if you find from a preponderance of the evidence, that the plaintiff had a valid placer mining location, known as the Hillside Bench Placer Claim, by virtue of location thereof, made on the 20th day of April, 1920, and that thereafter J. B. Quigley made a valid location of the lode claim known as the Red Top Lode Claim, extending through the upper side line of the said Hillside Bench Placer Claim, within the boundaries thereof, and that such location was made by said Quigley with the acquiescence of the plaintiff, or that he did not object thereto, then I instruct you that the appropriation of a part of plaintiff's placer claim by the said Quigley would not operate against the plaintiff so as to deprive him of any portion of the balance of his said claim or of any portion of the said Hillside Bench Placer Claim not included in Quigley's location of the Red Top Lode Claim."

XXII.

The court erred in instructing the jury as is contained in instruction No. 39 of the court's instructions to the jury, which is as follows:

"You are further instructed that prospectors and

locators of mining claims in Alaska, who are generally neither surveyors nor lawyers, in locating upon the unsurveyed mineral lands, frequently locate claims which are in excess in area of the amount allowed by law, and that unless the excess is unreasonably large, the location is valid. The excess, that is to say the amount over twenty acres, in a single placer claim, can be located by any person without the consent of the placer claimant, providing such excess is taken from the end farthest away from the initial stake. You are further instructed that the locator may also voluntarily cast off the excess, or any part thereof, from his claim; and if you find, from a preponderance of the evidence, that, prior to the entry of defendants upon the Hillside Bench Placer Claim as claimed by the plaintiff, the plaintiff did cast off, by agreement, expressed or implied, with one J. B. Quigley, any portion of plaintiff's placer claim as originally located and claimed, or if you find, from a preponderance of the evidence, that said Quigley made a valid location of his Red Top Lode Claim, partly within the boundaries of and covering a part of plaintiff's placer claim, and that plaintiff either acquiesced in or did not object to the act of Quigley, or to said Quigley's location of said Red Top Lode Claim, then such part thereof as was either so cast off by plaintiff, or included in said Quigley's location with the consent or acquiescence of plaintiff, could not thereafter be deemed to be a part of plaintiff's placer location; provided, however, that you find from a preponderance of the evidence that at the time of entry of defendants upon the said

Hillside Bench Placer Claim, the same was a valid placer mining location of plaintiff's''.

XXIII.

The court erred in instructing the jury as is contained in instruction No. 40 of the court's instructions to the jury, which is as follows:

"You are further instructed that if you find from a preponderance of the evidence that one J. B. Quigley, prior to the discovery and location of defendants of the Silver King Mining Lode as claimed by them, made a valid quartz location known as the Red Top Lode Claim, partly within the boundaries of plaintiff's placer mining claim, with the consent of plaintiff, or that the said plaintiff either acquiesced in or did not object to said Quigley's location of said Red Top Lode Claim, that then the portion of said Quigley's Red Top Lode claim lying within the boundaries of plaintiff's placer claim as originally located, could not thereafter be deemed to be any part of plaintiff's said placer claim, and that these facts, if you find by the preponderance of testimony that such facts exist, may be taken into consideration by you in determining whether the vein or lode located by defendants was, or was not, a known vein within the limits of plaintiff's placer claim, before or at the time, defendants discovered and located the Silver King Lode Mining Claim, as claimed by them; provided however, that you find from a preponderance of the evidence that, at the time of defendants' discovery and location, plaintiff was the owner of a valid placer mining claim, known

as the Hillside Bench Placer Mining Claim."

XXIV.

The court erred in instructing the jury as is contained in instruction No. 42 of the court's instructions to the jury, which is as follows:

"You are instructed that if you find and believe from a preponderance of all the evidence in the case that the plaintiff, William Grant, made a valid location of the Hillside Bench Placer Claim, as claimed by him, which he completed on the 20th day of April, 1920, and that in said year, or prior to July 1, 1921, he performed annual assessment work thereon, as required by law, to the extent of at least \$100.00, and if you further find from the preponderance of evidence that the lode or vein containing rock in place, thereafter discovered on the 6th day of June, 1921, by the defendants, was theretofore unknown and not known to exist within the boundaries of said Hillside Bench Placer Claim as reduced in area following Quigley's location, if you find from a preponderance of the evidence it was so reduced in area, then I instruct you that at the time of the entry of the defendants upon said Hillside Bench Placer Claim to prospect for said unknown lode, they, the defendants, could not initiate any right or title to said lode, as against the plaintiff, Grant, and you should return a verdict for the plaintiff.

You are further instructed, however, that if you find from a preponderance of evidence that the lode so discovered by the defendants was, at the time of the entry of defendants thereon, a known

lode, known to exist within the boundaries of the plaintiff's Hillside Bench Placer Claim as reduced in area, as aforesaid, by the Quigley location of the Red Top Lode Claim, then and in that case, even though the plaintiff Grant, had then and theretofore a valid prior placer location, known as the Hillside Bench Placer Claim, within the boundaries of which, as reduced in area following the aforesaid Quigley location, said known lode existed, the defendants herein had a legal right to locate said lode under the laws of the United States and of this Territory, and if you find from a preponderance of the evidence that they did so locate said lode substantially in the manner prescribed by law, as heretofore given to you in these instructions, or that they had made no valid location thereof, but were actually in possession thereof at the time of the commencement of this action, you should find for the defendants.

You are further instructed that possession which is actual and notorious would prevail against one who has neither title or possession."

XXV.

The court erred in rendering and entering a judgment in favor of the plaintiff and against the defendants to the effect that the plaintiff is the owner in fee as to all persons, save and except the United States, in and to the property described in the complaint in this action and that the defendants herein have no estate, right, title or interest therein.

XXVI.

The court erred in making and entering judg-

ment in favor of the plaintiff and against the defendants to the effect that the plaintiff recover his costs and disbursements herein.

WHEREFORE, the defendants pray that the judgment in the above entitled action may be reversed and that they be restored to all things which they have lost thereby.

R. F. ROTH.

Attorney for Defendants.

Service by copy accepted Sept. 7th, 1922.

MORTON E. STEVENS

Attorney for Plaintiff.

Indorsed:

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 7, 1922, Rob't W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

Petition for Writ of Error

WILLIAM J. CAMPBELL and J. L. Tobin, defendants in the above entitled cause, feeling themselves aggrieved by the verdict of the jury and the judgment made and entered in the above entitled court and cause on the 20th day of March, 1922, come now, by R. F. Roth, their attorney, and petition said court for an order allowing said defendants to prosecute a writ of error to The Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of

security which the defendants shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of such writ of error by the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioners will ever pray.

R. F. ROTH.

Attorney for Defendants.

Service of the foregoing petition for writ of error admitted by copy at Fairbanks, Alaska, this the 7th day of Sept. 1922.

MORTON E. STEVENS

Attorney for Plaintiff

Indorsed:

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 7, 1922, Rob't W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

Writ of Error.

United States of America: ss.

The President of the United States of America, To the Honorable Cecil H. Clegg, Judge of the United States District Court for the Fourth Division of the Territory of Alaska.

GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court of the Fourth Division of

the Territory of Alaska, before you, and between William Grant, plaintiff, and William J. Campbell and J. L. Tobin, defendants, a manifest error has happened to the great prejudice and damage of said defendants, William J. Campbell and J. L. Tobin, as is said and appears by the petition herein;

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justice of the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, together with this writ, so as to have the same at the said place in said circuit on the 1st day of April, 1923, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right, and according to the laws and customs of the United States, should be done.

WITNESS THE HONORABLE WILLIAM H. TAFT, Chief Justice of the Supreme Court of the United States, this 7th day of September, 1922.

ATTEST my hand and the seal of the United States District Court for the District of Alaska, Fourth Division, at the Clerk's office at Fairbanks, Alaska, on this 7th day of September, 1922.

(Court Seal) ROB'T. W. TAYLOR,
Clerk of the District Court for the Fourth division

of the Territory of Alaska.

ALLOWED this 7th day of September, 1922.

CECIL H. CLEGG

Judge of the District Court for the Fourth Division, Territory of Alaska.

Service of the within and foregoing writ of error, by receipt of copy thereof, is hereby admitted at Fairbanks, Alaska, this 7th day of Sept. 1922.

MORTON E. STEVENS, Attorney for Plaintiff.

Indorsed:

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 7, 1922, Rob't. W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

(Title of Court and Cause)

Order Allowing Writ of Error, Etc.

On motion of R. F. Roth, attorney for defendants, and the filing of a petition for a writ of error and an assignment of errors,

IT IS ORDERED that a writ of error be, and hereby is, allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, and the judgment hertofore entered herein, and that the amount of bond on said writ of error be and hereby is, fixed at \$1,000.00.

CECIL H. CLEGG.

District Judge

Entered in Court Journal No. 15 page 512.

Service of a true copy of the foregoing order is here-

by accepted this 7th day of Sept. 1922.

MORTON E. STEVENS

Attorney for Plaintiff

Indorsed:

Filed in the District Court, Territory of Alaska,
4th Div. Sep. 7, 1922, Rob't W. Taylor, Clerk, by
R. H. Geoghegan, Deputy.

(Title of Court and Cause)

Citation on Writ of Error

UNITED STATES OF AMERICA ss.

The President of the United States: To William
Grant, and to Morton E. Stevens, his attorney.

GREETING:

You are hereby cited and admonished to appear
at the United States Circuit Court of Appeals for
the Ninth Circuit, to be held at the City of San Fran-
cisco, in the State of California, on or before April
1st, 1923, pursuant to a writ of error filed in the
Clerk's office of the District Court of the Fourth
Division of the Territory of Alaska, wherein Wil-
liam Grant is defendant in error and William J
Campbell and J. L. Tobin are plaintiffs in error,
to show cause, if any there be, why the judgment
in said writ of error mentioned should not be cor-
rected and speedy justice should not be done to the
parties in error in that behalf.

WITNESS the Honorable William H. Taft, Chief
Justice of the Supreme Court of the United States
of America, this 7th day of September, 1922, and

the independency of the United States the one hundred and forty-sixth.

CECIL H. CLEGG

District Judge. Presiding in the District Court for the Fourth Division of the District of Alaska.

Service of the foregoing citation is hereby admitted by receipt of copy thereof this 7th day of Sept. 1922.

MORTON E. STEVENS

Attorney for Plaintiff

Indorsed:

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 7, 1922. ROB'T W. TALOR, Clerk,
By R. H. Geoghegan, Deputy.

(Title of Court and Cause.)

Order Extending Time to Perfect Appeal

On this 7th day of September, 1922, the above entitled cause came on to be heard before the judge in the above entitled court upon a stipulation of the parties herein for an order extending the return day and the parties appearing by their respective attorneys, and it appearing to the court that it is necessary owing to the great distance from Fairbanks to San Francisco, California, and the slow and uncertain communication, between said points, that an order extending the time in which to docket said cause and to file the record therein by the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, should be extended until the 1st day of April, 1923, and the parties hereto having

stipulated to the same,

Now, then, the court being fully advised in the premises and deeming that good cause exists therefor,

IT IS HEREBY ORDERED that the time within which said appellant shall perfect said cause on appeal be and the same is hereby enlarged to extend to and including the 1st day of April, 1923.

CECIL H. CLEGG

District Judge

Entered in court journal No. 15 page 512.

Indorsed:

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 7, 1922 Rob't. W. Taylor, Clerk, by R. H. Geoghegan, Deputy.

**Certificate of Clerk of U. S. District Court to
Transcript of Record**

United States of America,

Territory of Alaska, Fourth Division,—ss.

I, Rob't W. Taylor, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of 723 pages, numbered from 1 to 723, inclusive, constitutes a full, true and correct transcript of the record on Writ of Error in cause No. 2528, entitled, William Grant, Plaintiff, vs. Wm. J. Campbell and J. L. Tobin, Defendants, wherein Wm. J. Campbell and J. L. Tobin are Plaintiffs in Error, and William Grant is Defendant in Error, and was made pursuant to and in accordance with the Praecept of the Defendants and Plaintiffs in Error, filed in this action and made a part of this Transcript, and by virtue of the Writ of Error and Citation issued in said cause, and is the return thereof in accordance therewith.

And I do further certify that the Index thereof, consisting of pages numbered i to iv is a correct index of said Transcript of Record; also that the costs of preparing said transcript and this certificate, amounting to Two Hundred Fifty-two & 20-100 Dollars (\$252.20), has been paid to me by counsel for Plaintiffs in Error in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 24th day of October, A. D. 1922.

(Seal)

ROB'T. W. TAYLOR

Clerk of the District Court, Territory of Alaska,
Fourth Division.

